Tender No. BMTC/2023-24/SE0217/CALL-4
Dated: 01.03.2024

Request for Proposal (RFP)

for

Request for Proposal Selection of Service Provider for Procurement, Operation and Maintenance of 120 Nos. 900 mm floor height City type 9 Mtr Non AC Electric Buses on Gross Cost Contract (GCC) Model under National Clean Air Programme (NCAP) and State Urban Transport Fund (SUTF) of Directorate of Urban Land Transport (DULT).

by

Managing Director
Bengaluru Metropolitan Transport Corporation
Central Office, Shanthinagar, Bengaluru

Volume III– Master Service Agreement

CONTENTS

Part I Preliminary.....9
ARTICLE 1 DEFINITIONS AND INTERPRETATION.....12
1.1 Definitions.....12
1.2 Interpretation.....12-13
1.3 Measurements and arithmetic conventions.....14
1.4 Priority of agreements, clauses and schedules.....15
Part II Scope of the Agreement.....16
ARTICLE 2 SCOPE OF THE AGREEMENT.....17
2.1 Scope of the Agreement.....17
ARTICLE 3 AWARD OF CONTRACT.....18
3.1 The Contract.....18
ARTICLE 4 CONDITIONS PRECEDENT.....19
4.1 Conditions Precedent.....19
4.2 Damages for delay by the Service Provider.....20
4.3 Deemed Termination upon delay.....20
ARTICLE 5 OBLIGATIONS OF THE SERVICE PROVIDER.....21
5.1 Obligations of the Service Provider.....21-24
5.2 Obligations relating to Project Agreements.....25-26
5.3 Obligations relating to employment of personnel.....27-30
5.4 Advertisement and Branding of Buses.....30-31
5.5 Obligations regarding risk of loss or damage.....31
5.6 Obligations relating to information.....31
5.7 Obligations relating to noise control.....31
5.8 Facilities for physically challenged and elderly persons.....31
5.10 Obligations relating to charging infrastructure.....31-32
ARTICLE 6 OBLIGATIONS OF THE AUTHORITY.....33
6.1 Obligations of the Authority.....33-34
ARTICLE 7 REPRESENTATIONS AND WARRANTIES.....35
7.1 Representations and warranties of the Service Provider.....35-36
7.2 Representations and warranties of the Authority.....37
7.3 Disclosure.....37
ARTICLE 8 DISCLAIMER.....38
8.1 Disclaimer.....38

Part III Development and Operations.....39
ARTICLE 9 PERFORMANCE SECURITY
.....40
9.1 Performance Security.....40
9.2 Appropriation of Performance Security.....
40
9.3 Release of Performance
Security.....40
ARTICLE 10 LAND FOR DEPOTS.....
41
10.1 Site for the Maintenance Depots.....
41
10.2 Licence and Right of Way for Depot .....
41
10.3 Procurement of the Depot 42
10.4 Site to be free from
Encumbrances.....42
10.5 Protection of Site from
encroachments.....43
10.6 Special/temporary right of way 43
10.7 Access to the Authority...
.....43
10.8 Geological and archaeological finds.....43
10.9 Felling of trees.....43
ARTICLE 11 UTILITIES, ASSOCIATED ROADS AND TREES.....44
11.1 Existing utilities and road for Shifting of obstructing utilities
44
11.2 Shifting of obstructing
utilities..... 44
11.3 New utilities and transport systems.....44
ARTICLE 12 CONSTRUCTION OF THE MAINTENANCE DEPOTS.....45
12.1 Development of Site.....45
12.2 Obligations prior to commencement of
construction.....45
12.3 Maintenance during Construction
Period.....45
12.4 Drawings.....45-46
12.5 Completion of the Maintenance Depots.....46-
47
ARTICLE 13 PROCUREMENT OF BUSES.....48
13.1 Standards and
Specifications.....48
13.2 Ownership of Buses.....48
13.3 Procurement of Buses.....48
13.4 Prototype.....48
13.5 Tests at Manufacturer's
Plant.....49

13.6 Supply of Prototype....49
13.7 Acceptance of Prototypes....49-50
13.8 Supply of Buses....50
13.9 Delay in Procurement....50
13.10 Readiness for Commencement of Service....50-51
13.11 Damage due to accident....51
ARTICLE 14 ENTRY INTO COMMERCIAL SERVICE....52
14.1 Inspection by the Authority....52
14.2 Safety Inspection....52
14.3 Damages for delay....53
ARTICLE 15 CHANGE OF SCOPE....54
15.1 Change of Scope....54
15.2 Procedure for Change of Scope....54
15.3 Payment for Change of Scope....55
15.4 Restrictions on certain works....55
ARTICLE 16 OPERATION OF BUSES....56
16.1 Operations of Buses....56
16.2 Maintenance Depot....56
16.3 Operation Manual....57
16.4 Routes and Schedules....57
16.5 Operational Plan....58
16.6 Incidents En-Route....58
16.7 Excise from Performance of Obligations....59
16.8 Advertising on Buses and Maintance Depots....59
16.9 User Fare....60
ARTICLE 17 MAINTENANCE OF BUSES....61
17.1 Maintenance Obligations....61
17.2 Maintenance Manual....61
17.3 Spares and Consumables....61-62
17.4 Scheduled Maintenance....62
17.5 Bi-Monthly Schedule....62
17.6 Forty Five Day Schedule....62
17.7 Half-Yearly Schedule....62
17.8 Biennial Schedule....63
17.9 Periodic Over Haul Schedule....63
17.10 Extension of Due Date....63
17.11 Notice for Scheduled Maintenance....63
17.12 Unscheduled Maintenance....64

17.13 Maintenance Requirements....64
17.14 Prompt response....65
17.15 Damages for breach of Maintenance Obligations....65
17.16 De-commissioning due to Emergency....65-66
17.17 Authority's right to take remedial measures....66
17.18 Overriding powers of the Authority....66
17.19 Restoration of loss or damage to the Buses....67
17.20 Modifications to the Buses....67
17.21 Operation Assistance....67-68
17.22 Excuse from performance of obligations....68
17.23 Maintenance Repots 68
17.24 Warranties for defects and deficiencies.... 68-69
17.25 Maintenance Depot....69-70
17.26 Maintenance facilities....70
ARTICLE 18 SAFETY REQUIREMENTS....71
18.1 Safety Requirements....71
18.2 Guiding principles....71
18.3 Obligations of the Service Provider....71
18.4 Safety measures during construction....72
18.5 Annual Safety Report....72
ARTICLE 19 MONITORING OF OPERATION AND MAINTENANCE....73
19.1 Monthly status reports 73
19.2 Reports of unusual occurrence....73
19.3 Inspection....73
19.4 Tests....74
19.5 Remedial measures....74
19.6 Responsibility of the Service Provider....74
19.7 Real Time Data Access....75
ARTICLE 20 KEY PERFORMANCE INDICATORS....76
20.1 Key Performance Indicators....76
20.2 Availability....76-77
20.3 Declaration of Availability....77
20.4 Reliability....77
20.5 Operation of Buses....77-78
20.6 Punctuality....78
20.7 Frequency....78
20.8 Safety of Operations....79
20.9 Certification....79
20.10 Monthly Report....79
20.11 Passenger Charter....80
20.12 Damages for failure to achieve key performance indicators 80

20.13 Other Key Performance Indicators to be complied by the Service Provider..81-84
Part IV Financial Covenants.....85
ARTICLE 21 FINANCIAL CLOSURE.....86
21.1 Financial Closure.....86
21.2 Termination due to failure to achieve Financial Close.....86
ARTICLE 22 FEE.....87
22.1 Fee 87
22.2 Basis of Payment.....87
22.3 Payment of Fee.....88
22.4 Annual Assured Kilometre.....88
22.5 Payment for underutilized kilometer.....88
22.6 Payment for Excess Kilometers.....89
22.7 Revision of Fee.....89
22.8 Taxes and Statutory Levis.....89-90
ARTICLE 23 TRAINING AND DEPUTATION OF GOVERNMENT EMPLOYEES.....91
23.1 Training.....91
23.2 Content and duration of training.....91
23.3 Location of training.....91-92
23.4 Annual training programme.....92
23.5 Costs of training.....92
23.6 Deputation.....92
23.7 Terms of deputation.....92-93
ARTICLE 24 HANDOVER OF MAINTENANCE DEPOTS.....94
24.1 Handover of Maintenance Depots.....94
24.2 Provision of Spares upon Termination.....94
ARTICLE 25 INSURANCE.....95
25.1 Insurance during Agreement Period.....95
25.2 Insurance Cover.....95
25.3 Notice to the Authority.....95
25.4 Evidence of Insurance Cover.....95
25.5 Remedy for failure to insure.....96
25.6 Waiver of subrogation.....96
25.7 Service Provider's waiver.....96
25.8 Application of insurance proceeds.....96
25.9 Compliance with conditions of insurance policies.....96

ARTICLE 26 ACCOUNTS AND AUDIT.....97
26.1 Audited accounts.....97
26.2 Appointment of auditors.....97
26.3 Certification of claims by Statutory Auditors.....98
26.4 Set-off.....98
26.5 Dispute resolution.....98
ARTICLE 27 ESCROW ACCOUNT.....99
27.1 Escrow Account.....99
27.2 Deposit in Escrow Account.....99
27.3 Withdrawal During Agreement Period.....99-100
27.4 Withdrawal Upon Termination.....100
ARTICLE 28 TRAFFIC REGULATION AND SECURITY.....101
28.1 Traffic regulation by the Service Provider.....101
28.2 Security.....101
Part V Force Majeure and Termination.....102
ARTICLE 29 FORCE MAJEURE.....103
29.1 Force Majeure.....103
29.2 Non-Political Event.....103-104
29.3 Indirect Political Event.....104
29.4 Political Event.....104-105
29.5 Duty to report Force Majeure Event.....105
29.6 Effect of Force Majeure Event on the Contract.....105-106
29.7 Allocation of costs arising out of Force Majeure.....106
29.8 Termination Notice for Force Majeure Event.....106
29.9 Termination Payment for Force Majeure Event.....107
29.10 Dispute resolution.....107
29.11 Excuse from performance of obligations.....107
ARTICLE 30 COMPENSATION FOR BREACH OF AGREEMENT.....108
30.1 Compensation for default by the Service Provider 108
30.2 Compensation to be in addition 108
30.3 Mitigation of costs and damage 108
ARTICLE 31 SUSPENSION OF SERVICE PROVIDER'S RIGHTS.....109
31.1 Suspension upon Service Provider Default.....109
31.2 Authority to act on behalf of Service Provider.....109
31.3 Revocation of Suspension.....109
31.4 Termination.....110
ARTICLE 32 TERMINATION.....

111
32.1 Termination for Service Provider Default.....111-113
32.2 Termination for Authority Default.....113-114
32.3 Termination Payment.....114-115
32.4 Other rights and obligations of the Authority.....115-116
32.5 Survival of rights.....116
ARTICLE 33 DIVESTMENT OF RIGHTS AND INTEREST.....117
33.1 Divestment requirements upon expiry of the Agreement Period.....117-118
33.2 Inspection and cure.....118
33.3 Cooperation and assistance on Handover of Maintenance Depots.....118
33.4 Certificate.....118-119
33.5 Divestment costs etc.....119
ARTICLE 34 DEFECTS LIABILITY AFTER TERMINATION.....120
34.1 Liability for defects after Termination.....120
34.2 Retention in ESCROW Account.....120
Part VI Other Provisions.....121
ARTICLE 35 ASSIGNMENT AND CHARGES.....122
35.1 Restrictions on assignment and charges.....122
35.2 Permitted assignment and charges.....122
35.3 Substitution Agreement.....122
35.4 Assignment by the Government.....122
ARTICLE 36 CHANGE IN LAW.....123
36.1 Increase in costs.....123
36.2 Reduction in costs.....123
36.3 Protection of NPV.....124
36.4 Restriction on cash compensation.....124
ARTICLE 37 LIABILITY AND INDEMNITY.....125
37.1 General indemnity.....125
37.2 Indemnity by the Service Provider.....125-126
37.3 Notice and contest of claims.....126
37.4 Defence of claims.....126-127

37.5 No consequential claims....127
37.6 Limitation of Liability....127
37.7 Survival on Termination....127
ARTICLE 38 RIGHTS AND TITLE OVER SITES....128
38.1 Service Provider's rights....128
38.2 Access rights of the Authority and others....128
38.3 Property taxes....128
38.4 Restriction on sub-letting....128
ARTICLE 39 DISPUTE RESOLUTION....129
39.1 Dispute resolution....129
39.2 Conciliation....129
ARTICLE 40 DISCLOSURE....130
40.1 Disclosure of Specified Documents....130
40.2 Disclosure of Documents relating to safety....130
40.3 Withholding disclosure of Protected Documents....130
ARTICLE 41 REDRESSAL OF COMPLAINTS....131
41.1 Complaint Register....131
41.2 Redressal of complaints....131
ARTICLE 42 MISCELLANEOUS....132
42.1 Governing law and jurisdiction....132
42.2 Waiver of immunity....132
42.3 Depreciation....132
42.4 Waiver....132
42.5 Liability for review of Documents and Drawings....133
42.6 Exclusion of implied warranties etc....133
42.7 Survival....133
42.8 Entire Agreement....133
42.9 Severability....133-134
42.10 No partnership....134
42.11 Third parties....134
42.12 Successors and assigns....134
42.13 Notices....134-135
42.14 Language....135
42.15 Counter parts....135
ARTICLE 43
DEFINITIONS....136-148
SCHEDULES....149
SCHEDULE-A SITE OF THE MAINTENANCE DEPOT....150
SCHEDULE -B SPECIFICATIONS AND STANDARDS....152
SCHEDULE-C APPLICABLE PERMITS....154
SCHEDULE- D PERFORMANCE SECURITY....155
SCHEDULE - E COMPLETION SCHEDULE....158

SCHEDULE- F DESIGN AND DRAWINGS.....159
SCHEDULE- G PROCUREMENT SCHEDULE.....161
SCHEDULE- H TESTS.....162
SCHEDULE- I OPERATION AND MAINTENANCE REQUIREMENTS..165
SCHEDULE- J OPERATIONAL PLAN.....168
SCHEDULE- K SAFETY REQUIREMENTS.....169
SCHEDULE- L MAINTENANCE DEPOTS EQUIPMENT.....171
SCHEDULE- M ESCROW AGREEMENT.....174
SCHEDULE- N PASSENGER CHARTER.....189
SCHEDULE- O STAFFING QUALIFICATIONS.....195
SCHEDULE- P VESTING CERTIFICATE.....196
SCHEDULE- Q DATA MONITORING SYSTEM.....197
SCHEDULE- R PANEL OF CHARTERED ACCOUNTANTS.....201
SCHEDULE- S SUBSTITUTION AGREEMENT.....203
SCHEDULE- T STATEMENT OF INPUT COSTS.....212

Part I
Preliminary

MASTER SERVICE AGREEMENT (Wet lease)

THIS AGREEMENT is entered into on this {the .....day of....., 23.....}[1]

BETWEEN

1 **THE BENGALURU METROPOLITAN TRANSPORT CORPORATION (BMTC)** represented by its Managing Director, and having its offices at Central Office, K H Road, Shanthi Nagar, Bengaluru 560027, (herein after referred to as the "**Authority**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of One Part;

AND

2 {****** Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at, (hereinafter referred to as the "**Service Provider**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Other Part.

WHEREAS:

(A) The Authority has resolved to induct electric Buses in BMTC Area where the Service Provider would supply, operate and maintain the Buses in accordance with the terms and conditions set forth in the Master Service Agreement (the "**Agreement**") on a Gross Cost Contract (GCC) model.

(B) The Authority had accordingly invited proposals by its Request for Proposal No. ***** (the "**Request for Proposal**" or "**RFP**") for short listing of bidders and had shortlisted certain bidders including, *inter alia*, the {the sole bidder comprising.....,

(C) The Authority had prescribed the technical and commercial terms and conditions, and accordingly invited proposals (the "**Request for Proposals**" or "**RFP**") from the Bidders for undertaking the Project.

(D) After evaluation of the Proposals received, the Authority had accepted the Proposal of the Successful Bidder (the "**Successful Bidder**") and issued its Letter of Award No. dated..... (hereinafter called the "**LOA**") to the Successful Bidder requiring, *inter alia*, the execution of this Agreement within 15 (fifteen) days of the date of issue thereof.

(E) The Successful Bidder has since promoted and incorporated the .....

[1]The provisions in curly parenthesis and blank spaces shall be retained in the draft Agreement and shall be suitably modified/ filled after completion of the bid process to reflect the particulars relating to the successful bidder and other post-bid particulars.

as a company under the Companies Act 2013, and has requested the Authority to accept the Service Provider as the entity which shall undertake and perform the obligations and exercise the rights of the Successful Bidder under the LOA, including the obligation to enter into this Agreement pursuant to the LOA for undertaking the Project.

(F) {By its letter dated....., the Service Provider has also joined in the said request of the Successful Bidder to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the Successful Bidder including the obligation to enter into this Agreement pursuant to the LOA. The Service Provider has further represented to the effect that it has been promoted by the successful Bidder for the purposes hereof.}

(G) The Authority has agreed to enter into this Agreement with the Service Provider for procurement, operation and maintenance of Electric Buses and for setting up of the Maintenance Depots on Gross Cost Contract (the "**GCC**") basis, subject to and on the Terms and Conditions set forth hereinafter.

NOW THEREFORE in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the sufficiency and adequacy of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE 1
DEFINITIONS AND INTERPRETATION

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 43) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

(a) references to any legislation or any provision thereof shall include amendment or re- enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;

(b) references to laws of the State, laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;

(c) references to a "**person**" and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;

(d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;

(e) the words "**include**" and "**including**" are to be construed without limitation and shall be deemed to be followed by "**without limitation**" or "**but not limited to**" whether or not they are followed by such phrases;

(f) references to "**construction**" or "**building**" include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities

incidental to the construction, and "**construct**" or "**build**" shall be construed accordingly;

(g) references to "**development**" include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and "**develop**" shall be construed accordingly;

(h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;

(i) any reference to "**hour**" shall mean a period of 60 (sixty) minutes commencing either on the hour or on the half hour of the clock, which by way of illustration means 5.00 (five), 6.00 (six), 7.00 (seven) and so on being hours on the hour of the clock and 5.30 (five thirty), 6.30 (six thirty), 7.30 (seven thirty) and so on being hours on the half hour of the clock;

(j) any reference to day shall mean a reference to a calendar day;

(k) reference to a "**business day**" shall be construed as reference to a day (other than a Sunday) on which banks in Karnataka are generally open for business;

(l) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;

(m) any reference to "**quarter**" shall mean a reference to the period of 3 (three) months commencing from April 1, July 1, October 1, and January 1, as the case maybe;

(n) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;

(o) any reference to any period commencing "**from**" a specified day or date and "**till**" or "**until**" a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;

(p) the words importing singular shall include plural and vice versa;

(q) references to any gender shall include the other and the neutral gender;

(r) "**lakh**" means a hundred thousand (100,000) and "**crore**" means ten million (10,000,000);

(s) "**indebtedness**" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;

(t) references to the "**winding-up**", "**dissolution**", "**insolvency**", or "**reorganisation**" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of

liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;

(u) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such

reference; provided that this Sub-clause (u) shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;

(v) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party in this behalf and not otherwise;

(w) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;

(x) references to Recitals, Articles, Clauses, Sub-clauses, Provisions or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses, Provisions and Schedules of or to this Agreement; reference to an Annex shall, subject to anything to the contrary specified therein, be construed as a reference to an Annex to the Schedule in which such reference occurs; and reference to a Paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a Paragraph of the Schedule or Annex, as the case may be, in which such reference appears;

(y) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on *per diem* basis or otherwise, are mutually agreed genuine pre- estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the "**Damages**");and

(z) time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Service Provider to the Authority shall be provided free of cost and in three copies, and if the Authority is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.

1.2.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.

1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English

meaning and, for these purposes, the General Clauses Act, 1897 shall not apply.

1.3 Measurements and arithmetic conventions

All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down; provided that the drawings, engineering dimensions and tolerances may exceed 2 (two) decimal places as required.

1.4 Priority of agreements, clauses and schedules

1.4.1 This Agreement, and all other agreements and documents forming part of or referred to in this Agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:

(a) this Agreement; and

(b) all other agreements and documents forming part hereof or referred to herein, i.e. the Agreement at (a) above shall prevail over the agreements and documents at (b) above.

1.4.2 Subject to the provisions of Clause 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

(a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;

(b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;

(c) between any two Schedules, the Schedule relevant to the issue shall prevail;

(d) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;

(e) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and

(f) between any value written in numerals and that in words, the latter shall prevail.

Part II
Scope of the Agreement

ARTICLE 2
SCOPE OF THE AGREEMENT

2.1 Scope of the Agreement

The scope of the Agreement (the "**Scope of the Agreement**") shall mean and include but not limited to the Volume I and Volume II as below, during the Term:

(a) Design, Manufacture & supply of buses conforming to the latest Standards and Specifications set forth in Volume – II (the "**Buses**") and in accordance with the provisions of this Agreement.

(b) Procurement and installation of the charging infrastructure at the maintenance depots and at terminal/other charging locations specified by the authority for the charging of the buses.

(c) equip the depots provided by the Authority with the required plant and machinery to enable operation and maintenance of the Buses being provided at various Depot Sites specified in Schedule-B, in accordance with the provisions of this Agreement.

(d) operation of Buses as per Time Table and maintenance of Buses in accordance with the provisions of this Agreement; and

(e) all other scope as outlined as per the Terms and Conditions of this Agreement.

ARTICLE 3
AWARD OF CONTRACT

3.1 The Contract

3.1.1 Subject to and in accordance with the provisions of this Agreement, Applicable Laws and the Applicable Permits, the Authority hereby awards to the Service Provider the right to procure, supply, Operate and Maintain the Buses, procure, supply and maintain all plant and machinery, etc at the provided depot sites for the period specified herein (the "**Contract**") for a period of twelve (12) years from the commencement date of commercial operations, and the Service Provider hereby accepts the Contract and agrees to implement the same subject to and in accordance with the terms and conditions set forth herein.

3.1.2 Subject to and in accordance with the provisions of this Agreement, the Contract hereby granted shall oblige or entitle (as the case may be) the Service Provider to:

(a) Procure, assemble and supply Buses in accordance with applicable laws, applicable permits, specification & standards, design and drawings in accordance with the provisions of this Agreement

(b) Install, operate & Maintain the charging infrastructure in accordance with the provisions of this Agreement

(c) Operate and Maintain the Buses in accordance with the provisions of this Agreement;

(d) Access Right of Way, access and license in respect of Depot Sites for performing its Operations and Maintenance Obligations in accordance with the provisions of this Agreement

(e) Undertake to supply, Install, & commission all the plant and machinery required for the maintenance of the buses provided at the Depots;

(f) provide all plant and machinery required at the Depots;

(g) operate and maintain all plant and machinery at the Depots;

(h) perform and fulfil all of the Service Provider's obligations under and in accordance with this Agreement;

(i) save as otherwise provided in this Agreement, bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Service Provider under this Agreement; and

(j) neither assign, Handover or sublet or create any lien or Encumbrance on this Agreement nor transfer, sub-lease, licence or

part possession of the Depots related thereto including the Depot Site, save and except as expressly permitted by this Agreement.

ARTICLE 4
CONDITIONS PRECEDENT

4.1 Conditions Precedent

4.1.1 Save and except as provided in Articles 1, 4, 7, 8, 9, 10, 22, 30, 40 and 43, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the "**Conditions Precedent**"). Provided, however, that a Party may grant waiver from satisfaction of any Condition Precedent by the other Party in accordance with the provisions of Clauses 4.1.2 or 4.1.3, as the case may be, and to the extent of such waiver, that Condition Precedent shall be deemed to be fulfilled for the purposes of this Clause4.1.1

4.1.2 The Conditions Precedent required to be satisfied by the Service Provider from the date of this Agreement and/or receipt of LOA and prior to the Appointed Date shall be deemed to have been fulfilled when the Service Provider shall have:

(a) Registered office in Bengaluru city;
(b) provided Performance Security to the Authority within 21 (twenty one) days of receipt of the LOA pursuant to Article 9;
(c) procured if required for the Service Provider the Right of Way to the Depot Site in accordance with the provisions of Clause 10.3.1; and the existing identified depots will be handed over to the bidder in as is where is condition.

4.1.3 The Conditions Precedent required to be satisfied by the Service Provider from the date of this Agreement shall be deemed to have been fulfilled when the Service Provider shall have:

(a) executed and procured execution of Substitution Agreement;

(b) delivered to the Authority by their respective confirmation, in original, of the correctness of their representations and warranties set forth in Sub-clauses (k), (l) and (m) of Clause7.1;

(c) procured all the Applicable Permits specified in Schedule-C unconditionally or if subject to conditions, then all such conditions required to be fulfilled by the date specified therein shall have been satisfied in full and such Applicable Permits are in full force and effect;

(d) executed the Financing Agreements and delivered to the Authority 3 (three) true copies thereof, duly attested by the Director of the Service Provider.

(e) delivered to the Authority 3 (three) true copies of the Financial

Package and the Financial Model, duly attested by a Director of the Service Provider, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders; and

(f) delivered to the Authority a legal opinion from the legal counsel of the Service Provider with respect to the authority of the Service Provider to enter into this Agreement and the enforceability of the provisions there of;

Provided that upon request in writing by the Service Provider, the Authority may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.1.3. For the avoidance of doubt, the Authority may, in its sole discretion, grant any waiver hereunder with such conditions as it may deem fit.

4.1.4 Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.

4.1.5 The Parties shall notify each other in writing at least once a week on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied. For the avoidance of doubt, the Service Provider shall, upon satisfaction or waiver, as the case may be, of all the Conditions Precedent, notify the Authority of the occurrence of the Appointed Date.

4.2 Damages for Delay by the Service Provider

In the event that (i) the Service Provider does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.3 within the period specified in that Clause ,and (ii) the delay has not occurred as a result of breach of this Agreement by the Authority or due to Force Majeure, the Service Provider shall pay to the Authority Damages in an amount calculated at the rate of 0.25% (zero point two five percent) of the Performance Security for each day’s delay until the fulfillment of such Conditions Precedent, subject to a maximum amount equal to the Bid Security, and upon reaching such maximum, the Authority may, in its sole discretion and subject to the provisions of Clause 9.2, terminate the Agreement and blacklist the Service Provider for any public and/or private participation for a period of five years. Provided that in the event of delay by the Authority in procuring fulfillment of the Condition Precedent specified in Clause 4.1.2, no Damages shall be due or payable by the Service Provider under this Clause 4.3 until the date on which the Authority shall have procured fulfillment of the Conditions Precedent specified in Clause4.1.2.

4.3 Deemed Termination upon Delay

Without prejudice to the provisions of Clauses 4.2 and 4.3, and subject to the provisions of Clause 9.2, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, before 200 (Two Hundred) days from the date of this Agreement or the extended period provided in accordance with this Agreement, all rights, privileges, claims and entitlements of the Service Provider under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Service Provider, and the Agreement shall be deemed to have been terminated by mutual agreement of the Parties. Provided, however, that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Service Provider, the Performance Security of the Service Provider shall be encashed and appropriated by the Authority as Damages thereof.

ARTICLE 5
OBLIGATIONS OF THE SERVICE PROVIDER

5.1 Obligations of the Service Provider

The Service Provider shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement;

5.1.1 The Service Provider shall procure the Buses as per the Procurement Schedule provided in Schedule- G hereto for providing the Services in accordance with the Operational Plan and in accordance with the terms and conditions of this Agreement.

5.1.2 The Service Provider shall procure at its cost and expense, all Applicable Permits from Government Instrumentalities including but not limited, the certificate of registration, certification of fitness from the relevant RTO having jurisdiction over the Project and shall operate and maintain the Buses in accordance with the terms and conditions of this Agreement and the procuring / renewal of stage carriers will be Authorities responsibility.

5.1.3 Subject to and on the terms and conditions of this Agreement, the Service Provider shall, at its own cost and expense, procure finance for and undertake the design, engineering, procurement, construction and operation of the Maintenance Depots after the Authority has provided the Depot with basic civil infrastructure for the maintenance of Buses and shall observe, fulfill, comply with and perform all its obligations set out in this Agreement or arising hereunder.

5.1.4 The Service Provider shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.

5.1.5 Save and except as otherwise provided in this Agreement or Applicable Laws, as the case may be, the Service Provider shall, in discharge of all its obligations under this Agreement, conform with and adhere to Good Industry Practice.

5.1.6 Make adequate arrangements, to make available spare buses to ensure a fleet availability of 100% of the fleet 120 buses (One hundred and twenty) buses with assured km of 180 per day at any given Period of Contract. The payment will be made to the actual buses deployed and kms operated for the day.

5.1.7 The Service Provider, along with Buses, submit to the Authority, the manufacturers' and suppliers' warranties and guarantees in respect of the Buses including the ITMS system, CCTV, etc., which warranties and guarantees shall be passed on to the Authority, without any cost to the Authority. The Service Provider shall ensure that any annual maintenance

contract that it may execute in respect of the Buses or any part thereof, is executed after obtaining prior approval of the Authority. Authority will be providing identified depots as is where is condition.

5.1.8 The Service Provider, along with Buses, submit to the Authority, an operation and maintenance manual, which shall contain all details in relation to the instructions, data, and drawings necessary for the operations, maintenance and management of the Buses under normal and emergency conditions in a safe manner. The Authority will not share any such information documents with third party.

5.1.9 Shall, along with the Buses, submit to the Authority and any agency appointed by the Authority, a quality assurance manual prepared by the Service Provider. The Authority shall have the right, to review such quality assurance manual, and the Service Provider shall forthwith correct, or cause to be corrected, any deficiencies identified by the Authority.

5.1.10 Carry out all necessary and periodical reviews/ checks/ inspection and quality assurance of the Buses and Bus Depot and other items/ facilities from time to time as specified in this Agreement and according to the Good Industry Practices. The Service Provider shall maintain proper record of such checks/ inspections/ tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the results of the above actions.

5.1.11 Shall, along with Buses, submit to the Authority, safety manuals and codes of practice in relation to the Buses to be referred in relation to the required safety procedures. The Authority shall have the right, to review such safety manual, and the Service Provider shall forthwith correct, or cause to be corrected, any deficiencies identified by the Authority.

5.1.12 Arrange for regular preventive maintenance, heavy maintenance and breakdown repairs etc. through an annual maintenance contract or otherwise and use all reasonable endeavours for the Buses to be in roadworthy condition.

5.1.13 The Service Provider shall make adequate arrangement for overhauling of bus aggregates, repair and retreading of tyres, repair of bus bodies, repair of accidental buses, etc. to the satisfaction of the Authority as per Good Industry Practice.

5.1.14 Make adequate arrangement for attending to road calls on-line, towing of failed Buses, if required, clearance of bus ways, etc. in least possible time. If failed to resolve the issue within one hour, R.500 shall be levied for each break down.

5.1.15 Shall not tamper or interfere with any equipment, instrument or system

including the ITMS system and CCTV surveillance and any other IT and Bus monitoring devices provided in the Buses to enable provision of safer Bus Services to the passengers.

5.1.16 The Service Provider shall conform to Key Performance Indicators and at its own cost and expense pay fines, if it is in breach of Key Performance Indicators as per the provisions of Article 20.

5.1.17 Obtain from the Authority, the prior permission to install any equipment/ ancillaries/ accessories beyond the Bus Specifications inside or on the outside of the Buses.

5.1.18 Maintain the service quality, including behavior of the drivers and implement the reasonable instructions and directions in this regard, as may be informed by the Authority to the Service Provider in writing.

5.1.19 The Service Provider shall ensure high level of cleanliness in the Buses both inside and outside area of the Buses as per mutually agreed cleaning specifications between the Authority and Service Provider.

5.1.20 The Service Provider shall maintain the route destination display system in an operational state at all times.

5.1.21 Provide all information, data from the OBITS records, documents etc. It shall be mandatorily shared with the authority through mutually agreed methods and period. Respond to all notices, letters, and communications received from the Authority within a reasonable time frame.

5.1.22 Allow access to the Buses to all Users without any prejudice or discrimination save and except if a member of the User persists in any conduct which is prejudicial to the safety or security of the other passengers and /or general public.

5.1.23 Establish effective system of communication and coordination among the Parties for the purposes of the Bus Project.

5.1.24 Shall cooperate with and afford all reasonable opportunities to:

a) any third party service provider engaged by the Authority and their workmen, in relation to the Bus Project; and

b) the personnel of the Authority in relation to the Bus Project;

c) for the performance of their respective obligations, to the extent such obligations are connected with or are incidental to the Service Provider’s performance obligations herein.

d) Shall promptly be made good at Service Provider’s expense, any injury or damage that may be sustained by the Authority or any of the above persons, due to the Service Provider.

5.1.25 Shall co-operate with the Authority to:

a) make adequate communication arrangements/ develop communication facilities/ centre processes for effective and efficient, timely communication of all incidents/ accidents/ breakdowns etc. to relevant authorities/ persons/ officials.

b) co-operate with the Authority for the purpose of collection of Passenger Fare;

c) co-operate with the Authority for the purposes of monitoring and supervision of the quality, efficiency and adherence of the Service Provider to other contractual arrangements pertaining to Bus Project.

d) maintain sufficient log books / records, Bus wise, and all maintenance work/ activities pertaining to each Bus shall be entered there-in on regular basis and the Authority shall be free to inspect log books / records at all times with prior notice of 7 days. The Service Provider shall make log books / records available to the Authority and answer all queries.

e) respond to notices, letters and communications received from the Authority within the given time frame;

f) provide all information, data, records, documents or information as may be required by the Authority, from time to time;

5.1.26 Submit to the Authority, from time to time:

a) a monthly report which shall include but not be limited to status of Buses with regards to roadworthiness and compliance with highest maintenance standards manual or instruction in addition to performance monitoring indicators like (but not limited to) energy consumption, details of breakdown, operated kms, charging durations etc. as per the specific format requested by authority and, as per Good Industry Practices;

b) report on an immediate basis reporting incident requiring urgent attention of the Authority such as accidents, theft, etc., if any;

c) submit a summary of all the complaints as may be received by the Service Provider on a monthly basis to the Authority, if any.

5.1.27 The Service Provider shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:

(a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits, and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws;

(b) procure, as required, the appropriate proprietary rights, licenses,

agreements and permissions for materials, methods, processes, know-how and systems used or incorporated into the Buses and Maintenance Depots;

(c) perform and fulfil its obligations under the Financing Agreements;

(d) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it in connection with the performance of its obligations under this Agreement;

(e) always act in a manner consistent with the provisions of this Agreement and not omit or cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner be violative of any of the provisions of this Agreement;

(f) ensure that Users are treated with due courtesy and provided with ready access to services and information;

(g) support, cooperate with and facilitate the Government in the implementation and operation of the Project in accordance with the provisions of this Agreement; and

(h) take all reasonable precautions for the prevention of accidents on or around the Depots or during operation of Buses Services and provide all reasonable assistance and emergency medical aid to accident victims; and

(i) The Service Provider shall be liable for any damages incurred by the Authority on account of any gross negligence on the part of the Service Provider or its employees in relation to the operations of the Bus Services.

(j) transfer the developed Depots back to the Authority upon Termination of this Agreement, in accordance with the provisions thereof.

5.2 Obligations relating to Project Agreements

5.2.1 It is expressly agreed that the Service Provider shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Service Provider from its obligations or liability hereunder.

5.2.2 The Service Provider shall submit to the Authority the drafts of all Project Agreements or any amendments or replacements thereto for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Service Provider within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Service Provider shall submit to the Authority a true copy thereof, duly attested by a Director of the Service Provider, for

its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of the Authority to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by the Authority. No review and/or observation of the Authority and/or its failure to review and/or convey its observations on any document shall relieve the Service Provider of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.

5.2.3 The Service Provider shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Service Provider shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Service Provider.

5.2.4 Notwithstanding anything to the contrary contained in this Agreement, the Service Provider shall not sub-lease, sub-license, assign or in any manner create an Encumbrance on the Depot Sites, without prior written approval of the Authority, which approval the Authority may, in its discretion, deny if such sub-lease, sub-licence, assignment or Encumbrance has or may have a material adverse effect on the rights and obligations of the Authority under this Agreement or Applicable Laws.

5.2.5 The Service Provider shall procure that each of the Project Agreements contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Service Provider in the event of Termination or Suspension (the "**Covenant**"). For the avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality. The Service Provider expressly agrees to include the Covenant in all its Project.

5.2.6 Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Authority an acknowledgment and undertaking, in a form acceptable to the Authority, from the counter party(s) of each of the Project Agreements, where under such counter party(s) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from

the Authority in the event of Termination or Suspension.

5.2.7 Notwithstanding anything to the contrary contained in this Agreement, the Service Provider agrees and acknowledges that selection or replacement of an O&M Contractor and execution of the O&M Contract shall be subject to the prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Service Provider, and undertakes that it shall not give effect to any such selection or contract without prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Service Provider or its Contractors from any liability or obligation under this Agreement.

5.3 Obligations relating to Employment of Personnel

5.3.1 Comply with all Applicable Laws including labour and local laws and Applicable Clearances, pertaining to the employment of labour, staff and personnel engaged by it for the implementation and performance of the Bus Project that are now or may in the future become applicable to Service Provider's management, operation and maintenance of the Bus Project, and personnel/ drivers, engaged in such operations covered by this Agreement or accruing out of the performance of Bus Services and operations contemplated hereunder. The Service Provider shall be solely responsible and liable for compliance with all Applicable Laws, including labour and local laws and Applicable Clearances, pertaining to the employment of labour, staff and personnel engaged by it for implementing the Bus Project. The Authority shall provide full support and co-operation in obtaining the necessary permit, license as applicable from time to time.

i. The Service Provider for procurement, operation and maintenance of electric buses on Gross Cost Contract model shall obtain authentic license from the competent authority of the Labour Department, Government of Karnataka, under the provisions of the Contract Labour (Regulation & Abolition) Act, 1970.

ii. The Service Provider shall not engage child labour to carry out cleaning work and the wages of the laborers engaged by the Service Provider shall strictly conform to the provisions of the Minimum Wages Act.

iii. The Service Provider shall ensure/ comply all the statutory provisions of all the labour enactments/ labour laws applicable to the service

including the payment of minimum wages act, ESI, PF, Payment of Bonus Act, Workmen Compensation Act, Payment of Wages Act etc.

iv. The Service Provider shall keep the documents/ proof for having complied all the statutory provisions of labour laws, like PF, ESI etc, such that the Authority or the concerned authorities can verify.

v. The Service Provider shall register the workshop under the provisions of the factories act from the competent authority of Factories & Boilers Department, Government of Karnataka and provide/ensure all the provisions of health, safety & welfare of the employees engaged by him.

vi. The Service Provider shall also register under the Motor Transport Workers Act and obtain license thereof to provide/operate passenger bus services to the Authority as well as comply all the provisions of the Motor Transport Workers Act while engaging the services of drivers and their health, safety and welfare are concerned.

vii. The employees engaged by the service provider will have no right or claim for absorption or appointment whatsoever before the Authority.

viii. The Authority shall not be responsible for payment of wages and also not be responsible for non-payment of any statutory recoveries like PF, ESI etc., in respect of the workers engaged by the Service Provider.

ix. The Authority shall not liable for any liability, pecuniary or otherwise arising in any manner, during the course of providing the service.

x. The Authority shall not be responsible for any accident, injury etc caused to any worker engaged by the Service Provider for the purpose of this service / during the course of discharging their duty.

5.3.2 The Service Provider shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly trained for their respective functions.

5.3.3 The Service Provider shall, notwithstanding its obligations contained herein for employment and training of staff, undertake capacity building training and workshops for Bus maintenance, Depots and other infrastructure operations and maintenance etc., as may be directed by the Authority and in accordance with Article 23hereto.

5.3.4 The Service Provider shall ensure that the personnel engaged by it in the performance of its obligations under this Contract are at all times properly trained and possess the requisite skill and qualifications as per Good Industry Practice for undertaking their respective functions as provided in Article 23 of this Agreement.

5.3.5 The Service Provider agrees that Drivers appointed by it for the performance of Services shall comply with the requirements set forth in Schedule-O.

5.3.6 Prior to engaging any Driver for operating the Buses, under and in accordance with this Contract, the Service Provider shall ensure that each such Driver receives a combination of classroom instruction and behind-the-wheel instruction as specified in Article 23 sufficient to enable each Driver to operate the Bus in a safe and efficient manner in terms of this Contract.

5.3.7 The Service Provider shall ensure that each Driver receives refresher-training course from time to time during the Contract Period as specified in Clause23.2.

5.3.8 The Authority may require the Service Provider to immediately remove any staff member/ personnel employed by the Service Provider for the purpose of the Project, subject to provision of reasonable evidence, who in the opinion of the Authority:

(a) persists in any misconduct;

(b) is incompetent or negligent in the performance of his duties;

(c) fails to conform with any provisions of this Contract; or

(d) persists in any conduct which is prejudicial to the safety and security of the passengers and general public.

5.3.9 The Service Provider shall be solely and exclusively responsible for all Drivers, employees, workmen, personnel and staff employed for the purposes of implementing the Project. The Service Provider shall ensure that all personnel and staff are under its continued supervision to provide Bus Service in a safe and efficient manner to the public. Provided however the Authority shall not be liable for payment of any sum or give compensation for any claim (including but not limited to compensation on account of death/ injury/ termination) of such nature to such foregoing personnel and staff of the Service Provider at any point of time during the Contract Period or thereafter; the Service Provider undertakes to keep the Authority indemnified in this regard for any claim for payment raised by such foregoing persons.

5.3.10 The Service Provider shall ensure that all Drivers, personnel and staff wear uniform as approved by the Authority. The Service Provider shall at its own cost and expense, provide uniforms and shall ensure that Drivers and any other personnel and staff employed by it shall, at all times, wear clean uniforms while on duty or doing any act in relation to the Project.

5.3.11 The Service Provider shall be responsible for all the costs and expenses for employment of Drivers and other personnel including but not limited

to expenses for travel, training of its employees, and payment to vendors engaged by the Service Provider in connection with the implementation of this Project.

5.3.12 The Service Provider shall make efforts to maintain harmony and good industrial relations among the labour and personnel employed in connection with the performance of the Service Provider's obligations under this Contract by exercising supervision and control over the establishment;

5.3.13 The Service Provider shall be responsible for employing any and all manpower, personnel, labour, etc., as may be required to be deployed by it for implementation of the Project and as such the Service Provider on an exclusive basis shall be responsible for exercising supervision and control over such manpower, personnel, labour, etc. For all intents and purposes under this Contract, the Service Provider alone shall be the principal employer in terms of the provisions of the Factories Act, 1948 and the Contract Labour (Regulation and Abolition) Act, 1970 in respect of such manpower, personnel, labour, etc. The Authority shall at no point of time be concerned in any manner whatsoever with any employee or labour related issues of such manpower, personnel, labour, etc. of the Service Provider and shall not have any liability or responsibility towards them. The Service Provider shall keep the Authority indemnified for all claims that may arise due to Service Provider's non-compliance with any provisions of this Clause 5.5.12.

5.3.14 Shall indemnify and keep the Authority and its employees, staff and representatives, from any and all liabilities, loss, penalties, costs arising from or in relation to, any conduct of, or breach of obligations of the drivers, staff or personnel or other employees or representatives of the Service Provider appointed to perform any obligation under this Agreement.

5.3.15 Provide periodical training to its staff for updating their skills in all the related fields at its cost and to train drivers and organize refresher training programs mutually agreed with the Authority, ensuring that the drivers know and observe the Applicable Laws including but not limited to the applicable rules/ regulations/ practices/ instructions for operation and maintenance of the Bus Service and Bus Depot Premises.

5.3.16 The Authority shall conduct training to drivers from time to time on behavior from time to time for which training expenditure shall be borne by the Service Provider. Service Provider shall appoint the staff (except conductors) from time to time required for the purpose of operation and maintenance of the Buses in accordance with this Agreement and in accordance with the Applicable Laws.

5.3.17 The Service Provider will make its drivers, technicians and supervising staff undergo orientation/ familiarization training programme at BMTC

area at its own cost as outlined by the Authority across three (3) days. The Service Provider shall ensure that all drivers shall hold commercial passenger heavy duty vehicle license with public service vehicle badge, valid as required under the Applicable Laws and have minimum experience of such experience. The Service Provider shall submit true copy of valid Driver license of all driver appointed by them for this Project.

5.3.18 Staff engaged by the service provider shall not have any rights to claim regular appointment with the Authority.

5.3.19 The Authority shall not issue any identification cards to the staff engaged by the Service Provider.

5.3.20 The Service Provider cannot engage either Dismissed/Removed employees from any of the four State Transport Corporations of Karnataka, for a period of one (01) years from the dismissal Date. The list will be shared to the successful bidder.

5.4 Advertisement and Branding of Buses

5.4.1 The Buses or any part thereof shall not be branded in any manner to advertise, display or reflect the name or identity of the Service Provider or its shareholders, save to the extent as provided in Clause 16.8. The Service Provider undertakes that it shall not, in any manner, use the name or identity of the Project shareholders to advertise or display its own identity, brand equity or business interests, including those of its shareholders, save and except as may be necessary in the normal course of business.

5.4.2 Any and all advertisement on the Buses would be the sole discretion of the Authority during the period of the Contract. The placement of all the advertisement shall be the decision of Authority. The revenue generated through advertisement shall be property of service provider.

5.5 Obligations regarding Risk of Loss or Damage

5.5.1 The Service Provider shall bear the risk of loss in relation to each Bus for the performance of its Operation and Maintenance Obligations hereunder.

5.5.2 The Service Provider shall take or cause to be taken all steps necessary under Applicable Laws to protect the Authority against claims by other parties with respect thereto in accordance with the terms and provisions of this Agreement.

5.6 Obligations relating to Information

5.6.1 Without prejudice to the provisions of Applicable Laws and this Agreement, upon receiving a notice from the Authority for any information that it may reasonably require or that it considers may be necessary to enable it to perform any of its functions, the Service Provider shall provide such information to the Authority forthwith and in

the manner and form required by the Authority.

5.6.2 After receiving a notice from the Authority for reasoned comments on the accuracy and text of any information relating to the Service Provider's activities under or pursuant to this Agreement which the Authority proposes to publish, the Service Provider shall provide such comments to the Authority in the manner and form required by the Authority.

5.7 Obligations relating to Noise Control

The Service Provider shall take all such measures as may be necessary in accordance with Applicable Laws, Good Industry Practice and MV Act to control and mitigate the noise arising from the Buses and the Maintenance Depots and its impact on Users and the neighborhood.

5.8 Facilities for Physically Challenged and Elderly Persons

The Service Provider shall, in conformity with the guidelines issued from time to time by the Ministry of Social Justice and Empowerment and/or any other Ministry of Government of India (GoI) and/ or Government of Karnataka (GoK), or a substitute thereof, procure a barrier free environment for the physically or visually challenged and for elderly persons using the Buses.

5.10 Obligations relating to charging infrastructure

5.10.1 The Service Provider agrees that it shall provide for charging infrastructure at the designated Maintenance Depots/Opportunity charging at three locations approx. 6 chargers and numbers as per the operational plan with mutual consent depending upon the operation of buses, and shall provide adequate infrastructure for metering of consumption of electricity at each of the individual charging stations. The Service Provider agrees that it shall ensure that the charging stations installed at the Maintenance Depots are used only for the purpose of charging of Buses deployed for the Project and no other purpose whatsoever.

5.10.2 The Service Provider agrees that it is also responsible for providing the charging infrastructure at any third party locations that maybe required by them to ensure that the Buses deployed, operate for a minimum of 180 Kms per day. The Service Provider shall undertake the design, engineering, procurement, construction and operation of charging infrastructure and upstream power connectivity, etc. The Authority assist the Service Provider in undertaking any permissions, permits, etc., as the case maybe, but is not responsible or guarantee in anyway whatsoever for such support and approval from time to time. Existing depots will be provided to service provider as is where is condition and BMTC will be providing 11KV line up to depot gate.

5.10.3 The Service Provider also agrees that the Authority is only responsible for providing the upstream connectivity through dedicated feeder depending on load requirement from the nearest sub-station to the Maintenance

Depot. All other but not limited to civil and electrical infrastructure setup, operations, maintenance and compliance to Applicable Law and Safety is the responsibility of the Service Provider inside the Depots.

5.10.4 |Common area electricity charges of maintenance depots shall be borne (fully) by the service provider, in case of dedicated depots and in case of Hybrid depots then the common electricity charges shall be paid by the service provider on prorate basis (i.e on actual departures).

5.10.5The statutory taxes shall be borne by the bidder during the contract period.

5.10.6 The following parameters will be borne by BMTC.

- All municipal approvals for developing charging infra shall be in the scope of Authority.
- Authority shall provide the upstream power connection. Security deposit and approvals if required any for upstream power connection at depot or at any other location shall be in the scope of Authority.
- The LT meters are already provided in the existing depots.
- The statutory taxes shall be borne by the bidder during contract period.

5.11 Registration of the Project under Clean Development Mechanism (CDM)

The Operator shall endeavour to earn green revenues accruable from mitigation of greenhouse gases as a result of implementation of the Project, if available under Applicable Law. The Operator shall also undertake to prepare the project for availing green revenues and get these registered under the Clean Development Mechanism ("**CDM**") under Applicable Laws or any other such mechanism available during the Contract Period. The Operator shall share 50% (fifty percent) of the revenues earned from CDM with the Authority.

ARTICLE 6
OBLIGATIONS OF THE AUTHORITY

6.1 Obligations of the Authority

The Authority shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.

6.1.1 The Authority agrees to provide support to the Service Provider and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and Applicable Laws, the following:

(a) shall be responsible for levying and collection of User Fare and to penalize Users without ticket.

(b) provide the routes to be undertaken by the Service Provider as detailed in Clause 16.4 herein and in accordance with the Operational Plan;

(c) provide land (along with any buildings, constructions or immovable assets, if any, thereon), free from encumbrances, on license for setting up and operating Maintenance Depots in accordance with the provisions of this Agreement;

(d) provide, or cause to be provided, road connectivity at any location on the boundary of the Maintenance Depots;

(e) provide, or cause to be provided, reasonable support to the Service Provider also agrees that the authority is only responsible for providing the upstream connectivity through dedicated feeder depending upon load requirement from the nearest sub-station to the maintenance depot.

(f) upon written request from the Service Provider, assist the Service Provider in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity for the Maintenance Depots if not available;

(g) upon written request from the Service Provider, and subject to the Service Provider complying with Applicable Laws, provide all reasonable support and assistance to the Service Provider in procuring Applicable Permits, required from any Government Instrumentality for implementation and operation of the objectives set forth in this Agreement;

(h) support, cooperate with and facilitate the Service Provider in the implementation and operation of the Project in accordance with the provisions of this Agreement; and

(i) shall ensure the due and timely payment of Fees to the Service

Provider as per the invoices submitted.

(j) shall ensure deployment of adequate and competent personnel and employees for providing implementable Operational Plan for rendering Bus Services taking into consideration traffic congestions in the area of the Authority.

(k) shall ensure that the Service Provider is granted adequate desk space at the Command and Control as may be required during the Period of the Agreement to monitor the performance of its obligations under this Agreement

(l) shall provide necessary support and coordination to the Service Provider for obtaining and renewing, from time to time, the no objection certificate from the RTA/RTO and other approvals and permits under the Motor Vehicles Act, 1988 and any amendments thereafter from the Government for the operation of Buses Services. It shall be the responsibility of the Service Provider to maintain and renew all such no objection certificates, approvals and permits.

(m) appoint duly licensed and trained conductors, from time to time, to be engaged on the Buses in accordance with this Agreement and in accordance with the Applicable Laws and Operations Plan.

(n) shall ensure that the Conductors perform their duty diligently, honestly and in accordance with the Applicable Laws including the service conditions applicable to such conductors.

(o) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;

ARTICLE 7
REPRESENTATIONS AND WARRANTIES

7.1 Representations and warranties of the Service Provider

The Service Provider represents and warrants to the Authority that:

(a) it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;

(b) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;

(c) along with its Associates, it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;

(d) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;

(e) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising there under including any obligation, liability or responsibility hereunder;

(f) the information furnished in the Proposal and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;

(g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;

(h) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its

obligations under this Agreement;

(i) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Authority Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;

(j) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;

(k) the Successful Bidder and its Associates have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;

(l) the Successful Bidder is duly organised and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Authority to enter into this Agreement with the Service Provider pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;

(m) all its rights and interests in the Maintenance Depots shall pass to and vest in the Authority on the Handover Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;

(n) no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Authority Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;

(o) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Agreement or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection there with; and

(p) all information provided by the Successful Bidder in response to the Request for Proposals, is to the best of its knowledge and belief, true and accurate in all material respects

7.2 Representations and warranties of the Authority

The Authority represents and warrants to the Service Provider that:

(a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;

(b) it has taken all necessary actions under Applicable Laws to authorise the execution, delivery and performance of this Agreement;

(c) it has the financial standing and capacity to perform its obligations under this Agreement;

(d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;

(e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Authority Instrumentality which may result in any material adverse effect on the Authority's ability to perform its obligations under this Agreement;

(f) it has complied with Applicable Laws in all material respects;

(g) it has good and valid right to the Depot Sites, and has power and authority to grant a license, in respect thereto to the Service Provider;

(h) upon the Service Provider submitting the Performance Security and complying with the covenants herein, it shall not at any time during the term hereof, interfere with peaceful exercise of the rights and discharge of the obligations by the Service Provider, subject to and in accordance with the provisions of this Agreement; and

(i) upon the Service Provider submitting a written request to this effect with necessary particulars, it shall enable personnel of the Service Provider to travel on board the Buses for the purpose of discharging the Maintenance Obligations in accordance with the provisions of this Agreement and Good Industry Practice.

7.3 Disclosure

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the

other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any right, remedy or obligation of either Party under this Agreement.

ARTICLE 8
DISCLAIM
ER

8.1 Disclaimer

8.1.1 The Service Provider acknowledges that prior to the execution of this Agreement, the Service Provider has, after a complete and careful examination, made an independent evaluation of the Request for Proposals, Scope of the Agreement, Specifications and Standards, Site, Depot Sites, existing structures, local conditions, physical qualities of ground, subsoil and geology and all information provided by the Authority or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. Save as provided in Clause 7.2, the Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumption, statement or information provided by it and the Service Provider confirms that it shall have no claim whatsoever against the Authority in this regard.

8.1.2 The Service Provider acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Service Provider, the Successful Bidder and its Associates or any person claiming through or under any of them.

8.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate this Agreement.

8.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Authority to give any notice pursuant to this Clause 8.1.4 shall not prejudice the disclaimer of the Authority contained in Clause 8.1.1 and shall not in any manner shift to the Authority any risks assumed by the Service Provider pursuant to this Agreement.

8.1.5 Except as otherwise provided in this Agreement, all risks relating to the Agreement shall be borne by the Service Provider and the Authority shall not be liable in any manner for such risks or the consequences thereof.

Part III
Development and Operations

ARTICLE 9
PERFORMANCE SECURITY

9.1 Performance Security

The Service Provider shall submit the following Performance Security for the performance of its obligations hereunder:

9.1.1 Provide to the Authority no later than 21 (twenty one) days from the date of receipt of LoA, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to 5% of the annual tender value in the form set forth in Schedule-D (the "Performance Security")beyond 90 days after contract period. Until such time the Performance Security is provided by the Service Provider pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security to the Service Provider.

9.1.2 The Authority shall release the applicable subsidy to the Service Provider. The Release of subsidy/ incentive payment shall be made phase wise to the Service Provider on furnishing an irrevocable and unconditional guarantee from a Bank for a sum equivalent to the subsidy being released phase wise as (the "Subsidy Performance Security") by the Service Provider before 7 (seven) days on the release of subsidy amount. The Subsidy Performance Security shall be valid for a period of 5 (five) years from the date of submission. Until such time the Performance Security is provided by the Service Provider pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security to the Service Provider.

The Subsidy Performance Security shall be furnished by the Service Provider as per following.

Sl. No.	The activity being completed	Percentage of demand incentive to be released
1.	After issue of supply order and signing of the Master Service Agreement by Authority with Successful Bidder; as mobilization advance.	20%
2.	Delivery of Buses	40%
3.	After 6 months of the successful commercial operation of Buses	40%

9.1.3 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Service Provider within a period of 30 (thirty) days from the date of LOA the Authority may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Service Provider under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence

of the Service Provider, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

9.2 Appropriation of Performance Security

Upon occurrence of an Service Provider Default or failure to meet any Condition Precedent, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate from the Performance Security the amounts due to it for and in respect of such Service Provider Default or for failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security, the Service Provider shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Service Provider shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 32. Upon such replenishment or furnishing of a fresh Performance Security, as the case may be, the Service Provider shall be entitled to an additional Cure Period of 60 (Sixty) days for remedying the Service Provider Default or for satisfying any Condition Precedent, and in the event of the Service Provider not curing its default within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article32.

9.3 Release of Performance Security

The Performance Security shall remain in force and effect during the Contract Period and shall returned to the Service Provider upon Termination of this Agreement within 120 (one hundred and twenty) days of the Termination Date, without any interest, subject to any deductions which may be made by the Authority in respect of any outstanding dues under the terms of this Agreement.

ARTICLE 10
LAND FOR DEPOTS

10.1 Site for the Maintenance Depots

The site for the Maintenance Depots shall comprise the facility described in Schedule-A and in respect of which leasehold rights and possession shall be provided and granted by the Authority to the Service Provider under and in accordance with this Agreement (the "**Depot**"). For the avoidance of doubt, it is hereby acknowledged and agreed that references to the Depot shall be construed for the Maintenance Depots as set forth in Schedule-A. The bidder may visit the identified depots. No advertisements are allowed in depot premises.

10.2 Licence and Right of Way for Depot

10.2.1 The Authority hereby grants to the Service Provider access to the Depot for carrying out any surveys, investigations and soil tests that the Service Provider may deem necessary prior to the Appointed Date it being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of survey, investigations and tests carried out or work undertaken by the Service Provider on or about the Depot pursuant hereto in the event of Termination or otherwise.

10.2.2 In consideration of the license fee of **Rs. 1,000 (Rupees Thousand) plus applicable taxes per annum per Bus,** this Agreement and the covenants and warranties on the part of the Service Provider herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Service Provider, effective from the dates specified in this Clause 10.2, leave and licence rights in respect of all the land (along with any buildings, constructions or immovable assets, if any, thereon) comprising the Depot at {**** and ****} which is described, delineated and shown in Schedule-A hereto (the "**Licensed Premises**"), on an "as is where is" basis, free of any Encumbrances, to develop, operate and maintain the said Licensed Premises, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Licensed Premises, any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of this Agreement and, solely for the purposes permitted under this Agreement, and for no other purpose whatsoever.

10.2.3 The Authority shall provide and grant to the Service Provider, vacant access, constructive possession and Right of Way to the Depot Site on or prior to the dates specified below:

(a) the Depot Site situated at {****} shall be provided within {***} months of the Appointed Date; and

(b) the Depot Site situated at {***} shall be provided within {***} months of the Appointed Date.

10.2.4 Notwithstanding the provisions of Clause 10.2.2, the licence granted in respect of the Depot hereunder shall expire in respect of such Depot upon the handover of the relevant Maintenance Depots under and in accordance with the provisions of Clause17.14.

10.2.5 The Service Provider hereby irrevocably appoints the Authority (acting directly or through a nominee) to be its true and lawful attorney, to execute and sign in the name of the Service Provider, a handover or surrender of the license granted/ to be granted pursuant hereunder, a sufficient proof of which will be the declaration of any duly authorised officer of the Authority, and the Service Provider consents to it being registered for this purpose.

10.3 Procurement of the Depot

10.3.1 Pursuant to the notice specified in Clause 4.1.2, the Authority Representative and the Service Provider shall, on a mutually agreed date

and time, inspect the Depot and prepare a memorandum containing an inventory of the Depot including the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Depot. Such memorandum shall have appended thereto an appendix (the "**Appendix**") specifying in reasonable detail those parts of the Depot to which vacant possession has not been granted to the Service Provider. Signing of the memorandum, in two counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall, subject to the provisions of Clause 10.2.2, be deemed to constitute a valid licence and Right of Way to the Service Provider for free and unrestricted use and development of the vacant and unencumbered Depot Site during the Contract Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever. For the avoidance of doubt, it is agreed that possession with respect to the parts of the Depot as set forth in the Appendix shall be deemed to have been granted to the Service Provider upon vacant access thereto being provided by the Authority to the Service Provider.

10.3.2 Without prejudice to the provisions of Clause 10.3.1, the Parties hereto agree that the Authority shall have granted "As Is Where Is" possession and right of way such that the Appendix shall not include more than 10% (ten per cent) of the total area of the Site required and necessary for the Maintenance Depots.

10.3.3 On and after signing the memorandum referred to in Clause 10.3.1, and until the Handover Date, the Service Provider shall maintain a round-the-clock vigil over the Depot and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Service Provider shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its cost and expenses.

10.3.4 The Authority shall make best efforts to procure and grant, no later than 90 (ninety) days from the Appointed Date, the Right of Way to the Service Provider in respect of all land included in the Appendix,.

10.4 Site to be free from Encumbrances

Subject to the provisions of Clause 10.3, the Depot shall be made available by the Authority to the Service Provider pursuant hereto free from all Encumbrances and occupations and with the Service Provider being required to make payment of INR 1,000/- (Indian Rupee Thousand Only) plus applicable taxes per annum per Bus, and increase of 5% (five percent) every 3 (three) years payable to the Authority on account possession and use of such Depot for the duration of the Contract Period, except insofar as otherwise expressly provided in this Agreement. It is further agreed that the Service Provider accepts and undertakes to bear

any and all risks arising out of the inadequacy or physical condition of the Depot. All other costs, compensation, expenses but not limited to charges for the acquisition of permits, licenses, infrastructure of any kinds, etc. shall be borne on and above the annual rental cost per Bus defined in Clause 10.4 of this Agreement.

10.5 Protection of Site from encroachments

During the Contract Period, the Service Provider shall protect the Depot from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any Contractor or other person claiming through or under the Service Provider to place or create any Encumbrance or security interest over all or any part of the Depot or the Project Assets, or on any rights of the Service Provider therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.

10.6 Special/temporary right of way

The Service Provider shall bear all costs and charges for any special or temporary right of way required by it in connection with access to the Depot. The Service Provider shall obtain at its cost such facilities on or outside the Depot as may be required by it for the purposes of the Project and the performance of its obligations under this Agreement.

10.7 Access to the Authority

The licence, right of way and right to the Depot granted to the Service Provider hereunder shall always be subject to the right of access of the Authority and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

10.8 Geological and archaeological finds

It is expressly agreed that mining, geological or archaeological rights do not form part of the license granted to the Service Provider under this Agreement, and the Service Provider hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest. Such rights, interest and property on or under the Depot Sites shall vest in and belong to the Authority or the concerned Government Instrumentality. The Service Provider shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the Authority and the concerned Government Instrumentality forthwith of the discovery thereof and comply with such instructions as the Authority or the concerned Government Instrumentality may reasonably give for the removal of such property. For the avoidance of doubt, it is agreed that any reasonable expenses incurred by the Service Provider hereunder shall be reimbursed by the Authority. It is also agreed that the Authority shall procure that the instructions hereunder are

issued by the concerned Government Instrumentality within a reasonable period so as to enable the Service Provider to continue its construction works with such modifications as may be deemed necessary.

10.9 Felling of trees

The Authority shall assist the Service Provider in procuring the Applicable Permits for felling of trees to be identified by the Service Provider for this purpose if and only if such trees cause a material adverse effect on the construction, operation or maintenance of the Maintenance Depots, as the case may be. In the event of any delay in felling thereof for reasons beyond the control of the Service Provider, it shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay in the felling of trees. For the avoidance of doubt, the costs and expense in respect of felling of trees shall be borne by the Service Provider and any revenues thereof shall be paid to the Authority.

ARTICLE 11
UTILITIES, ASSOCIATED ROADS AND TREES

11.1 Existing utilities and roads

Notwithstanding anything to the contrary contained herein, the Service Provider shall ensure that the respective entities owning the existing roads, right of way or utilities on, under or above the Depot Site are enabled by it to keep such utilities in continuous satisfactory use, if necessary, by providing suitable temporary or permanent diversions with the authority of the controlling body of that road, right of way or utility, and the Authority shall, upon written request from the Service Provider, initiate and undertake at the Service Provider's cost, legal proceedings for acquisition of any right of way necessary for such diversion.

11.2 Shifting of obstructing utilities

The Service Provider shall, subject to Applicable Laws and with assistance of the Authority, undertake shifting of any utility including electric lines, water pipes and telephone cables, to an appropriate location or alignment within or outside the Depot Site if and only if such utility causes or shall cause a material adverse effect on the construction, operation or maintenance of the Maintenance Depots. The cost of such shifting shall be borne by the Service Provider or by the entity owning such utility, if the Authority so directs, and in the event of any delay in shifting thereof, the Service Provider shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay on the part of the entity owning such electric lines, water pipes or telephone cables, as the case maybe.

11.3 New utilities and transport systems

11.3.1 The Service Provider shall allow, subject to such conditions as the Authority may specify, access to, and use of the Depot Sites for laying telephone lines, water pipes, electric cables or other public utilities. Where such access or use causes any financial loss to the Service Provider, it may require the user of the Depot Site to pay compensation or damages as per Applicable Laws. For the avoidance of doubt, it is agreed that use of the Depot Site under this Clause shall not in any manner relieve the Service Provider of its obligation to maintain the Maintenance Depot in accordance with this Agreement and any damage caused by such use shall be restored forthwith.

ARTICLE 12
CONSTRUCTION OF THE MAINTENANCE DEPOTS

12.1 Development of Site

The Authority shall, at its own cost and expense, provide, or cause to be provided road connection between the boundary of the Maintenance Depot(s) and the nearest major road, at the time of Handover of the space allocated in the Maintenance Depots. BMTC will provide 11 KVA line up to depot gate and the service provider has to develop charging station/ chargers including civil work. BMTC will provide depots as is where condition is. BMTC shall provide available facilities in Depots i.e. Service Bays, Roof Covered Inspection pits, Rooms for Office, Spares, Drivers, Water, Power for maintenance, office. Compound wall, CC flooring for entire Depot, Washing Bay, Security Room, Spares & Lubricants stock room, Driver and Crew rest room with Toilets, ETM Section Room, Revenue Collection Room, Tools, Depot lighting. Water used for washing of buses (200 litres/ day/bus) will be calculated as per BWSSB rates and deducted in the monthly bills payable.

12.2 Obligations prior to commencement of any construction

Prior to commencement of any Construction Works, the Service Provider shall:

(a) submit to the Authority its detailed design, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the relevant works within the space allocated in the Maintenance Depots in accordance with the Maintenance Depot Completion Schedule as set forth in Schedule - E;

(b) appoint its representative duly authorised to deal with the Authority in respect of all matters under or arising out of or relating to this Agreement;

(c) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, the Applicable Laws and Applicable Permits; and

(d) make its own arrangements for quarrying of materials needed for the relevant works within the space allocated in the Maintenance Depot under and in accordance with the Applicable Laws and Applicable Permits.

12.3 Maintenance during Construction Period

During the Construction Period, the Service Provider shall maintain, at its cost, the existing roads, building, infrastructure, Furniture, Fixtures and Features, utilities, etc within the space allocated in the Maintenance Depots so that their traffic worthiness and safety are at no time

materially inferior as compared to their condition 15 (fifteen) days prior to the date of this Agreement, and shall undertake the necessary repair and maintenance works for this purpose; provided that the Service Provider may, at its cost, interrupt and divert the flow of traffic if such interruption and diversion is necessary for the efficient progress of Construction Works and conforms to Good Industry Practice. For the avoidance of doubt, it is agreed that the Service Provider shall at all times be responsible for ensuring safe operation of the existing roads.

12.4 Drawings

In respect of the Service Provider's obligations relating to the Drawings of the Maintenance Depot as set forth in Schedule-E, the following shall apply:

(a) The Service Provider shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Maintenance Depot Completion Schedule, 3 (three) copies each of all Drawings to the Authority for review.

(b) By submitting the Drawings for review to the Authority, the Service Provider shall be deemed to have represented that it has determined and verified that the design and engineering, including the field construction criteria related thereto, are in conformity with the Scope of the Project, Specifications and Standards, Applicable Laws and Good Industry Practice.

(c) Within 15 (fifteen) days of the receipt of the Drawings, the Authority shall review the same and convey its observations to the Service Provider with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards. The Service Provider shall not be obliged to await the observations of the Authority on the Drawings submitted pursuant hereto beyond the said 15 (fifteen) days period and may begin or continue Construction Works at its own discretion and risk.

(d) If the aforesaid observations of the Authority indicate that the Drawings are not in conformity with the Scope of the Project or the Specifications and Standards, such Drawings shall be revised by the Service Provider and resubmitted to the Authority for review. The Authority shall give its observations, if any, within 10 (ten) days of receipt of the revised Drawings.

(e) No review and/or observation of the Authority and/or its failure to review and/or convey its observations on any Drawings shall relieve the Service Provider of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for

the same in any manner.

(f) Within 30 (thirty) days of COD, the Service Provider shall furnish to the Authority a complete set of as-built Drawings, in 2 (two) hard copies and in its editable digital format or in such other medium and manner as may be acceptable to the Authority, reflecting the Maintenance Depots as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Maintenance Depots and setback lines, if any, of the buildings and structures.

12.5 Completion of the Maintenance Depots

12.5.1 On or after the Appointed Date, the Service Provider shall undertake construction and/or modification of the Maintenance Depots as specified in Schedule-E, and in conformity with the Specifications and Standards set forth in Schedule-B. The 180 (One hundred eighty) days from the Appointed Date shall be the scheduled date for completion of the Maintenance Depots (the "**Scheduled Maintenance Depot Completion Date**") and the Service Provider agrees and undertakes that the Maintenance Depot shall be completed on or before the Scheduled Maintenance Depot Completion Date. Existing depots will be handed over as and when the buses are delivered.

12.5.2 The Service Provider shall construct/modify the Maintenance Depot in accordance with the Maintenance Depot Completion Schedule set forth in Schedule-E. In the event that the Service Provider fails to achieve any Project Milestone within a period of 90 (ninety) days from the date set forth for such Project Milestone in Schedule-E, unless such failure has occurred due to Force Majeure or for reasons attributable to the Authority, it shall pay Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until such Project Milestone is achieved; provided that if any or all Project Milestones or the Maintenance Depot Scheduled Completion Date are extended in accordance with the provisions of this Agreement, the dates set forth in Schedule-E shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule-E has been amended as above; provided further that in the event Maintenance Depot Completion is achieved on or before the Scheduled Maintenance Depot Completion Date, the Damages paid under this Clause 12.5.2 shall be refunded by the Authority to the Service Provider, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.5.2 shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

12.5.3 In the event that the Maintenance Depot is not completed and Maintenance Depot Completion does not occur within 90 (ninety) days

from the Scheduled Maintenance Depot Completion Date, unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement.

ARTICLE 13
PROCUREMENT OF BUSES

13.1 Standards and Specifications

The Service Provider shall procure and deploy Buses in accordance with the specifications and standards of Buses provided in Schedule-B. Provisions for validators and passenger count in the buses to be provided.

13.2 Ownership of Buses

The Service Provider agrees that it shall be solely responsible for procurement of Buses. Subject to the terms of this Agreement, the Parties agree that during the Contract Period, ownership of Buses shall remain with the Service Provider and the Service Provider shall cause all Buses to be registered in the name of the Service Provider and the Authority shall not exercise any right, title, or interest over any of the Buses, subject to the terms of this Agreement.

13.3 Procurement of Buses

The Service Provider shall procure Buses as per the Procurement Schedule provided in Schedule-G here to and shall ensure readiness of Buses for commencement of Services (the "**Scheduled Commencement of Services**") in accordance with Article 14. The Service Provider further agrees that prior to procurement of Buses, it shall procure a Prototype Bus for the approval of the Authority in accordance with Clause13.4.

13.4 Prototype

13.4.1 The Service Provider shall, no later than 30 days from the date of issue of LoA, provide to the Authority 3 (three) copies of the Designs and Drawings of the Prototypes, as specified in Schedule-F. The Service Provider shall also share homologation certificate and any propriety information forming part of Designs and Drawings of the bus during Prototype inspection.

13.4.2 The Authority shall depute a team of experts for undertaking a review of the Designs and Drawings and for submitting a report (the "**Design Report**") to the Authority within 15 (fifteen) days from the date of receiving the Designs and Drawings. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of the Authority to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such Designs and Drawings by the Authority.

13.4.3 Pursuant to the Design Report or otherwise, the Service Provider shall

carry out such modifications in the designs as may be necessary for conforming with the Specifications and Standards.

13.4.4 The Authority expressly agrees that it shall, subject to the provisions of this Agreement and Applicable Laws, maintain the confidentiality of Designs and Drawings provided to it by the Service Provider.

13.5 Tests at Manufacturer's Plant

13.5.1 Prior to supply of a sample Bus that conforms to the Specifications and Standards (the "**Prototype**"), the Service Provider shall carry out, or cause to be carried out, at its own cost and expense, all Tests in accordance with Schedule-H and such other tests that the Service Provider may consider necessary to demonstrate that the Prototype complies in all respects with the Specifications and Standards. The Service Provider shall provide to the Authority forthwith, a copy of the Service Provider's report on each test containing the results of such test and the action, if any that it proposes to take for compliance with the Specifications and Standards.

13.5.2 The Service Provider shall, with at least 4 (four) weeks' notice to the Authority, convey the date, schedule and type of tests that shall be conducted on the Prototype at the manufacturer's plant and the Authority shall have the right, but not the obligation, to nominate its representative to witness the tests. It is clarified that all costs incurred on account of the visit of Authority's representatives to the manufacturer's plant shall be borne by the Service Provider.

13.5.3 The Authority's Representative shall make a report forthwith on the tests witnessed by it and provide a copy thereof to the Parties for review. The Service Provider shall, prior to dispatch of the Prototype for delivery to the Authority, procure that defects and deficiencies, if any, are rectified and the Prototype conforms with the Specifications and Standards.

13.5.4 In the event of failure of any Test specified in Clause 13.5.1, the Service Provider shall rectify the defect and conduct repeat Tests, and the procedure specified in this Clause 13.2 shall apply *mutatis mutandis* to such repeat Tests.

13.5.5 A third party inspection team will be appointed by the Authority for the inspection of prototype bus and the specified quantity.

13.6 Supply of Prototype

13.6.1 The Service Provider shall, no later than 60 (sixty) days or as per the mutually agreed delivery schedule from the Appointed Date, supply a Prototype bus (ensuring registration formalities are completed) and demonstrate to the Authority, tests and trials to be conducted in accordance with the provisions of Clause13.4.

13.6.2 In the event that the Service Provider fails to supply the Prototype bus within the period specified in Clause 13.4.1, the Authority may recover from the Service Provider an amount of INR 25,000/- plus applicable taxes per day from the Performance Security as Damages or part thereof,

by which the delivery of the Prototype is delayed, provided that such Damages shall not exceed 10% (ten percent) of the Performance Security.

13.7 Acceptance of Prototypes

13.7.1 The Authority shall, no later than 30 (thirty) days after successful completion of the Tests, communicate its acceptance of the Prototype to the Service Provider.

13.7.2 Prior to accepting the delivery of Prototype, the Authority may inspect the Prototype in accordance with the provisions of Clause13.4.

13.7.3 The Parties expressly agree that conducting Tests by the Authority shall not relieve or absolve the Service Provider of its obligations and liabilities under this Agreement in any manner whatsoever.

13.8 Supply of Buses

13.8.1 Upon approval of the Prototype Bus in accordance with the provision of Clause 13.7, the Service Provider shall supply the remaining Buses in accordance with the provisions of Schedule -G and shall comply with timelines specified therein. The Service Provider agrees that the Buses shall include the same specifications and standards as the approved Prototype provided in this Article 13.

13.9 Delay in supply of buses

13.9.1 In the event the Service Provider is unable to supply any Bus as per this Article 13, for reasons not attributable to the Authority the Service Provider shall pay Damages of INR 1500/- (Indian Rupee one thousand five hundred only) plus applicable taxes for each day of delay for each Bus (whose procurement is delayed) till the date of procurement of such bus. All these damages shall be excluding applicable taxes.

13.9.2 If the supply of any Bus is delayed by a period exceeding 60 (sixty) days or as per mutually agreed delivery schedule as provided in the supply Schedule or if the Damages payable by the Service Provider for such delay in supply of Buses cross 10% (percent) of the Performance Security, notwithstanding anything provided in this Agreement, it shall be regarded as an Service Provider Event of Default.

13.9.3 The Damages payable by the Service Provider shall become due and payable within 7 days of receipt of notice in this regard from the authority, failing which the authority can deduct such damages from their monthly payment and/or from the performance security provided by the Service Provider. In case , the authority deducted such cost of damages from the performance security provided by the service provider, then the service provider shall replenish the Performance Security to the minimum

required amount upon receipt of such notification from the Authority.

13.10 Readiness for Commencement of Service

13.10.1 The Service Provider agrees that it shall undertake such activities as required under Applicable Law, Applicable Permits and Good Industry Practice for achieving Readiness for Commencement of Services. Without limiting the generality of the foregoing, the such activities shall include:

(a) Joint inspection of Buses with the Authority;

(b) Certificate of Registration;

(c) Certificate of Fitness;

(d) Payment of taxes;

(e) Insurance of Buses as specified in Article 25;and

(f) Any other readiness related activity to ensure roadworthiness of the Buses.

13.10.2 The Service Provider shall achieve Readiness for Commencement of Service for each Lot of Buses supplied by it in accordance with Article 14.

13.11 Damage due to accident

13.11.1 The Service Provider shall be liable for any damage to the Bus on account of accidents. The Service Provider agrees that it shall undertake repair and rectification of such damaged Bus such that the Bus conforms to the Specifications and Standards, to the satisfaction of the Authority. Service Provider shall immediately provide replacement to the bus which met with an accident/ repair/breakdown from their spare fleet and operate the same without affecting the services.

13.11.2 The Service Provider agrees that the Authority shall not be responsible for any liability arising out of any civil or criminal proceedings instituted by affected parties, as a result of such accident of the Bus and the Service Provider agrees that it shall keep the Authority indemnified against any third- party claims arising from such accidents.

13.11.3 The Service Provider shall notify the relevant Government Instrumentalities and the Authority of any accidents verbally/email, within 1 (one) hour of its occurrence followed by a written notice and in the event, such accident involves any fatality, the Service Provider shall intimate such accident verbally within 5 (five) minutes of the occurrence of such accident, followed by a written notice. Where any persons involved in the accident have suffered injuries, the Service Provider shall co-ordinate with the relevant Government Instrumentalities to ensure

timely medical help and treatment. The authority shall provide reasonable assistance support to the service provider on best efforts basis.

13.11.4 In the event of an accident of a Bus leading to its complete destruction, such that the Bus cannot be repaired and operated in normal circumstances, and is rendered inoperable, the Service Provider shall replace such damaged Bus at the earliest with a new Bus of such make and model which meets the Specifications and Standards and as acceptable to the Authority. The Service Provider agrees that any Bus brought as a replacement to a damaged Bus in accordance with this Clause 13.11.4 shall be used in the Service for the remaining Contract Period. However, the service provider shall ensure 100% fleet availability / utilization, if the Service Provider shall not replace such damaged Bus the penalty will be levied based on cancelled kms.

ARTICLE 14
ENTRY INTO COMMERCIAL SERVICE

14.1 Inspection by the Authority

14.1.1 The Authority may inspect each Bus or any Lot of Buses, in accordance with the provisions of this Clause 14.1, prior to putting such Buses into operation.

14.1.2 The Service Provider shall notify the Authority, no later than 15 (fifteen) days prior to the date of delivery of the Buses, its delivery schedule. The Authority may, in its discretion, nominate its representative to carry out an inspection on the scheduled date and time.

14.1.3 The Service Provider shall provide the assistance necessary for the Authority Representative to perform the inspection in accordance with the provisions of this Clause 14.1. For the avoidance of doubt, the Parties expressly agree that such inspection shall be completed within a period of 72 (seventy two) hours from the time when a Bus is made available for inspection and upon expiry thereof, the Bus shall, subject to satisfactory completion of the safety inspection under Clause 14.2, be deemed to have

been approved by the Authority.

14.1.4 The Authority Representative shall submit an inspection report for each Bus specifying the defects and deficiencies that shall be rectified by the Service Provider in conformity with the Specifications and Standards (the "**Punch List**"). The Service Provider shall, no later than 15(fifteen) days, rectify each item in the Punch List and notify the Authority of the same. The Authority may, in its discretion, inspect the Bus within 10 (ten) days thereof and in the event that any defect or deficiency specified in the Punch List shall have remained without rectification thereof, the Service Provider shall pay to the Authority as Damages, INR 5,000/- (Indian Rupee Five Thousand) per bus per day of delay until all items of the Punch List are rectified.

14.2 Safety Inspection

14.2.1 The inspection specified in Clause 14.2, shall include a safety inspection in accordance with the provisions of Article 18. In the event that the Authority Representative concludes that the Bus does not conform with the Specifications and Standards, and is, therefore, not safe for entry into service, he shall convey to the Parties forthwith, a report stating in detail the reasons for his findings. The Service Provider shall, notwithstanding anything to the contrary contained in this Article 14, withdraw the Bus for rectification thereof and present it to the Authority for inspection after the defects or deficiencies have been rectified.

14.2.2 The Project shall be deemed to be complete when the Commissioning Certificate for the Maintenance Depot and the Buses is issued under the provisions of Clause 13.10 and accordingly, the commercial operation date of the Project shall be the date on which such Completion Certificate is issued ("**COD**"), provided, however, that the entry of Project or part thereof into commercial service shall always be subject to compliance with the provisions of Clause18.3.

14.3 Damages for delay

Subject to the provisions of Clause 12.5, if COD does not occur prior to the 91st (ninety first) day/ or as per mutually agreed due date after the approval of prototype of the Buses, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Service Provider shall pay Damages to the Authority in a sum calculated at the rate of INR 1500/- (Indian Rupee one thousand five hundred Only) plus applicable taxes for delay of each day until COD is achieved from the monthly payment to the Service Provider/ Performance Security submitted by them.

ARTICLE 15
CHANGE OF SCOPE

15.1 Change of Scope

15.1.1 The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of upgraded technology or additional works and services in the Buses or at the Maintenance Depots, which are not included in the Scope of the Agreement as contemplated by this Agreement (the "**Change of Scope**"). Any such Change of Scope shall be made in accordance with the provisions of this Article 15 and the costs thereof shall be expended by the Service Provider and reimbursed to it by the Authority in accordance with this Article15.

15.1.2 If the Service Provider determines at any time that a Change of Scope is necessary for providing safer and improved Buses, including upgradation of any technology thereof, it shall by notice in writing require the Authority to consider such Change of Scope. The Authority shall, within 15 (fifteen) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings there for in accordance with this Article 15 or inform the Service Provider of its reasons for not accepting such Change of Scope or for accepting such Change of Scope without any payment obligations hereunder, as the case may be.

15.2 Procedure for Change of Scope

15.2.1 In the event of the Authority determining that a Change of Scope is necessary, it shall issue to the Service Provider a notice specifying in reasonable detail the works and services contemplated there under (the "**Change of Scope Notice**").

15.2.2 Upon receipt of a Change of Scope Notice, the Service Provider shall, with due diligence, provide to the Authority such information as is necessary, together with preliminary Documentation in support of:

(a) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the material and labour costs calculated in accordance with Good Industry Practice.

15.2.3 Upon receipt of information set forth in Clause 15.2.2, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Service Provider, and the Parties shall thereupon make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, the Authority shall issue an order (the "**Change of Scope Order**") requiring the Service Provider to proceed

with the performance thereof. In the event that the Parties are unable to agree, the Authority may, by issuing a Change of Scope Order, require the Service Provider to proceed with the performance thereof pending resolution of the Dispute.

15.2.4 The provisions of this Agreement, insofar as they relate to Tests, shall apply *mutatis mutandis* to any modifications in the Buses undertaken by the Service Provider under this Article 15.

15.3 Payment for Change of Scope

15.3.1 Notwithstanding anything to the contrary contained in Clause 15.3., all costs arising out of any Change of Scope Order shall be borne by the Service Provider, subject to an aggregate ceiling of 0.25% (zero point two five per cent) of the Total Project Cost. Any costs in excess of the ceiling shall be reimbursed by the Authority in accordance with Clause15.3.2.

15.3.2 The costs arising due to Change in Scope of Work shall be mutually agreed between the Parties after approval from the Board of the Authority and other Government Instrumentals governing this Project. .

15.4 Restrictions on certain works

15.4.1 Notwithstanding anything to the contrary contained in this Article 15, the Authority shall not require the Service Provider to undertake any works or services if such works or services are likely to delay completion /modification of the Maintenance Depots; provided that in the event that the Authority considers such works or services to be essential, it may issue a Change of Scope Order, subject to the condition that the works forming part of or affected by such Order shall not be reckoned for purposes of determining completion/modification of the Maintenance Depots.

15.4.2 Notwithstanding anything to the contrary contained in this Article 15, the cumulative costs relating to all the Change of Scope Orders for provision of works and services in the Maintenance Depots shall not exceed 5% (five percent) of the total project cost during the Contract Period.

ARTICLE 16
OPERATION OF BUSES

16.1 Operations of Buses

16.1.1 The Service Provider shall Operate Buses in accordance with the provisions of this Agreement and shall comply with the Operation Standards as provided in Schedule-I of this Agreement.

16.1.2 In addition to the Applicable Permits, the Service Provider shall ensure that it supply and maintains a valid Certificate of Fitness and pollution control certificate from the relevant Government Instrumentalities for all the Buses throughout the Contract Period in accordance with Applicable Law.

16.1.3 In the event the Service Provider fails to ensure the security of the Buses and there is any theft of or damage to any component of the Bus including but not limited to any component, spare parts, hardware, software, instruments etc., the Service Provider shall reinstall or replace, as the case may be, such Bus component, spare, parts, hardware, software, instrument(s) etc. of the same or equivalent quality and specification, after giving prior written notice to the Authority.

16.1.4 The Service Provider shall, if required, provide Buses for operating additional Buses. The Parties agree that the maximum number of additional Buses which may be made operational under this sub-clause 16.1.4 shall be subject to up to 25%(Twenty Five percent) of the Buses for the first year from the Appointed Date and over the Contract Period. Notwithstanding the foregoing, the Parties agree that provision of additional Buses shall be subject to adequate availability of space and infrastructure (in the form of parking space at the Maintenance Depot, Charging Infrastructure etc.,) for parking, maintenance and cleaning and charging of Buses.

16.1.5 The Service Provider shall ensure that the Buses are in accordance with the Specifications and Standards, provide adequate staff including Drivers with uniform, and equipped with fully functional mounted devices as specified in this Agreement.

16.2 Maintenance Depot

16.2.1 The Service Provider shall use the Maintenance Depots, only for the purposes specified in this Agreement.

16.2.2 The Service Provider shall ensure that the Maintenance Depot is adequately staffed with skilled staff, equipped with requisite equipment, plant & machinery and stocked with consumables, so as to ensure compliance with O&M Standards provided in this Agreement.

16.2.3 The Service Provider shall ensure that if any plant and machinery is provided by the authority from the Maintenance Depots at the time of Handover, they are used, maintained and returned in working order upon Termination of the Agreement.

16.3 Operation Manual

The Service Provider shall prepare an operation manual (the "**Operation Manual**") for the operation of Buses in conformity with Good Industry Practice and the provisions of this Article 16. The Service Provider shall provide 10 (ten) copies of a provisional operation manual (the "**Provisional Operation Manual**") to the Authority no later than 15 (fifteen) days from the Appointed Date. The Authority may review the Provisional Operation Manual and convey its comments to the Service Provider within a period of 15 (fifteen) days from the date of receipt thereof. The Service Provider shall revise the Provisional Operation Manual, as may be necessary, and provide 50 (fifty) copies of the Operation Manual, accompanied by an electronic copy thereof, no later than the 30 (thirty) days from the Appointed Date. The Operation Manual shall be revised and updated once every year and the provisions of this Clause 16.3 shall apply, *mutatis mutandis*, to such revision. For the avoidance of doubt, the Parties expressly agree that until the Operation Manual is provided hereunder, the Provisional Operation Manual shall apply.

16.4 Routes and Schedules

16.4.1 The Parties agree that the Authority shall have the exclusive right to determine Routes, frequency and schedules of the Buses as part of Operational Plan through the Contract Period. The Authority shall provide the routes for Operation as specified in Schedule-J (the "**Operational Plan**"). The Service Provider shall only ply Buses on the Operational Plan, unless directed otherwise by the Authority. For the avoidance of doubt, it is clarified that the Authority may amend the Operational Plan with prior notice of seven days to the Service Provider. Provided further that if the Authority amends the Operational Plan pursuant to this Clause 16.4.1, there shall be no reduction in the Annual Assured Bus Kilometres.

16.4.2 In the event the Service Provider makes any unscheduled or unauthorized trip outside operation hours and beyond the Routes or in violation of any requirement of the Operational Plan or without specific instructions of the Authority in relation thereof, it shall be liable for payment of Damages at the rate of 0.01% of the Performance Security per incident and the damages will be recovered from the monthly payment bills.

16.4.3 The Authority may after due notification to the Service Provider, change the route(s)/ frequency/ schedule of the Buses due to any reason whatsoever including but not limited to passenger feedback, special circumstances, festivals and seasonal requirements. In case the Authority

makes any such change(s), it shall notify the Service Provider in writing 07 (seven) days prior to implementation of such change, except in unavoidable circumstances during daily operations.

16.4.4 Unless directed by the Authority, the Service Provider shall maintain the frequency of the Buses as specified in the Operational Plan.

16.4.5 The actual hours of operations in a day are specified in the Operational Plan. The Parties agree that the hours of operation may be segregated into peak hours and off peak hours of operations.

16.4.6 In the event there is a need for change in route of Bus, the Service Provider shall inform the control centre for monitoring of all activities ("**Control Centre**") about it and the same shall be tallied with the change in route length measured by ITS ("**Intelligent Transport Systems**") and/or Odometer reading at the end point of the route and the distance so measured shall be reckoned for the purpose of making payment to the Service Provider.

16.5 Operational Plan

16.5.1 The Authority shall develop a Operational Plan containing details including but not limited to number and type of Buses, details of the assured availability during the Contract Period, routes, schedules of Buses including description of Bus Stops, frequency and table of schedule providing Bus headways, based on peak and off peak hour (the "**Operational Plan**"), more particularly specified in Schedule-J.

16.5.2 The Service Provider shall operate the Buses in accordance with the Operational Plan, and shall at all times ensure that the required frequency of Buses is maintained as specified under the Operational Plan or as per the instructions of the Authority issued from time to time.

16.5.3 The Service Provider shall make available Buses at prescribed locations as per the Operational Plan.

16.5.4 The Authority reserves the right to make changes to the Operational Plan from time to time with prior notification, of at least 07 (seven) days, of such change to the Service Provider.

16.5.5 The Authority may review the Operational Plan if there is delay in completing Bus trips for a continuous period of 3 (three) month.

16.5.6 The Service Provider and its employees shall always extend courtesy while interacting with public.

16.5.7 Notwithstanding anything to the contrary contained herein, the Parties agree that any amendment to the Operational Routes or the Operational Plan shall not reduce the Annual Assured Bus Kilometres.

16.6 Incidents En-Route

16.6.1 In case of breakdown of a Bus during normal course of Operations, the Service Provider shall immediately inform the Control Centre and its maintenance team whereupon the Service Provider shall ensure speedy tow-away of the affected Bus within 2 (two) hours of breakdown. The Service Provider shall immediately provide a replacement Bus to complete the route after such Bus failure, failing which it will be deemed as an Service Provider Event of Default and the Service Provider shall be liable to pay Damages at the rate of 0.01% of the Performance Security and the damages will be recovered from the monthly payment bills.

16.6.2 The Service Provider shall ensure regular communication with Buses throughout the Operation Period by making use of relevant technology as specified in this Agreement, more specifically provided in Clause19.7.

16.6.3 In an unforeseen event involving unruly behavior by passengers or vandalism in or involving the Bus, the Service Provider shall forthwith intimate the Authority. If the Bus in question is not in a condition to complete the route or go back to the Bus Depot, then the Service Provider shall arrange to tow-away such Bus within1 (one) to 2 (two) hours of such occurrence, failing which Service Provider shall be liable to pay Damages at the rate of 0.01% (zero point zero one percent) of the Performance Security and the damages will be recovered from the monthly payment bills.

16.6.4 In the event of an accident and/or breakdown of the Buses during Operations Period, the Authority shall support the Service Provider to remove the accident and/or broken down Bus from its location and return the Bus to the Maintenance Depot or Police Station or any locations as per the Applicable Laws at a cost as per existing charges of authority excluding applicable taxes. If such charges are applicable on the Service Provider, such charges will be deducted from their monthly bill due to the Service Provider for providing their Services.

16.6.5 The Service Provider shall, provide first aid to injured on-site and also co-ordinate with the relevant Government Authorities including but not limited to the police to ensure timely medical help to the injured passengers.

16.6.6 If required, the Service Provider shall extend all cooperation to the Authority including but not limited to filing complaints to the police and or any other investigation undertaken in relation there.

16.7 Excuse from Performance of Obligations

The Service Provider shall not be considered in breach of its obligations under this Contract if any Bus is not available for Operation on account of event of a Force Majeure Event or breach of any obligation by the Authority. Notwithstanding the foregoing, the Service Provider agrees that it shall keep the unaffected Buses available for Operations.

16.8 Advertising on Buses and Maintenance Depots

16.8.1 Subject to Applicable Law, the Authority may decide to display advertisements inside and outside the Buses at its discretion of Authority. At the Maintenance Depot no advertisement are allowed in depot premises.

16.8.2 In the event the Service Provider is permitted to display advertisements on the Buses and Maintenance Depot., it shall submit for the approval of the Authority a proposal in relation thereof including but not limited to details such as the content of the advertisements, dimensions and material to be used for advertisement posters and the places on/ within Buses and Maintenance Depot where advertisements are proposed to be displayed.

16.8.3 The Service Provider shall display advertisements on the Buses and Maintenance Depot in accordance with any instructions issued by the Authority in regard thereto, and provisions of Applicable Laws as per the written approval of the Authority.

16.8.4 The Parties agree that no display of negative content in advertisement shall be permitted on the Buses irrespective of the time of the day and scale of the advertisement. Such negative content/ advertisement include but is not limited to:

(a) advertisements prohibited by the Applicable Law and/or any Government Instrumentality including but not limited to the Advertisement Council of India;
(b) advertisements of goods or services which are prohibited by Applicable Law;
(c) advertisements of political parties or religious groups;
(d) advertisements of any kind of prohibited drugs, alcohol and all kinds of tobacco products for smoking;
(e) advertisements containing pornographic contents and/ or an “indecent representation of women” within the meaning of the Indecent Representation of Women (Prohibition) Act, 1986;
(f) advertisements containing sexual overtone and/ or nudity;
(g) advertisements glorifying exploitation of women or child;
(h) advertisements showing violence and cruelty to either human being or any kind of plant or animal;

16.8.5 Notwithstanding the provisions of Clause 16.8.4 above, the Service Provider shall at all times ensure that no part of the Buses including but not limited to the external and internal colour, body of the Buses or any part thereof are damaged due to advertisement stickers or any other form of display material. The Service Provider shall ensure that the advertisements are displayed in such a manner that it does not obstruct partially or completely, the visibility from inside and outside of the Buses.

16.8.6 Placement of Advertisement - The Service Provider may place the advertisement inside and outside the Buses at designated slots described, such that it does not obstruct any safety, advisory or other mandatory information as per the written approval of the Authority;

16.8.7 The revenue generated through advertisement on the buses will be prerogative of service provider.

16.9 User Fare

16.9.1 On and from the COD till the Handover Date, the Authority or a third party nominated by the Authority (**Authority Nominated Personnel**) shall have the right to demand, collect and appropriate User Fare from the Users in accordance with this Agreement.

16.9.2 The Authority or Authority Nominated Personnel shall, in accordance with Clause 16.9.1 above, provide Conductors for collection of ticket revenue, every day prior to commencement of operations for the day, either at the Maintenance Depot or at a specified location and on the time decided by the Authority. In the event the Conductor does not report on time or remains absent, the Service Provider shall immediately inform the Authority's Representative or the representative of the Third Party engaged by the Authority, as the case may be, who shall provide are placement.

16.9.3 The Service Provider acknowledges and agrees that upon payment of User Fare to the Authority or the Authority Nominated Personnel, any User shall be entitled to use the Buses and the Service Provider shall not place, or cause to be placed, any restriction on such use, except to the extent specified in any Applicable Law, Applicable Permits or the provisions of this Agreement. It is clarified that the Authority or Authority Nominated Personnel shall collect User Fare from passengers prior and/or in the Bus to boarding the Bus and the Service Provider shall have the right to refuse entry to passengers refusing payment of the User Fare.

ARTICLE 17
MAINTENANCE OF BUSES

17.1 Maintenance Obligations

17.1.1 The Service Provider shall maintain all Buses in accordance with the provisions of this Article 17, the Specifications and Standards, the Maintenance Manual and the Maintenance Requirements (the "**Maintenance Obligations**").

17.1.2 The Parties agree that for discharging the Maintenance Obligations hereunder, the Service Provider shall provide its staff, movable equipment, Spares and Consumables, workshop, office space etc. Existing depots will be provided to service provider as is where is condition. The Bidder may visit the identified depots.

17.2 Maintenance Manual

17.2.1 The Service Provider shall prepare a repair and maintenance manual (the "**Maintenance Manual**") for the maintenance of Buses in conformity with Good Industry Practice and the provisions of this Article 17. The Service Provider shall provide 10 (ten) copies of a provisional maintenance manual (the "**Provisional Maintenance Manual**") to the Authority no later than 90 days from the Appointed Date. The Authority may review the Provisional Maintenance Manual and convey its comments to the Service Provider within a period of 15 (fifteen) days from the date of receipt thereof. The Service Provider shall revise the Provisional Maintenance Manual, as may be necessary, and provide 50 (fifty) copies of the Maintenance Manual, accompanied by an electronic copy thereof, no later than the 30 (thirty) days from the Appointed Date. The Maintenance Manual shall be revised and updated once every year and the provisions of this Clause 17.2 shall apply, *mutatis mutandis*, to such revision. For the avoidance of doubt, the Parties expressly agree that until the Maintenance Manual is provided hereunder, the Provisional Maintenance Manual shall apply.

17.2.2 The Maintenance Manual shall include details of the periodic intervals at which the Operator will perform its Maintenance Obligations on each Bus ("**Scheduled Maintenance**"). The Operator shall ordinarily undertake Scheduled Maintenance at the Maintenance Depots and shall ensure that the Maintenance Depots are fully equipped with all equipment, tools, tackles, Consumables and Spares required to undertake the Scheduled Maintenance of the Buses.

17.2.3 The Operator shall, at least 15 (fifteen) days prior to the date of any Scheduled Maintenance issue a notice to the Authority identifying the Buses that will undergo such Scheduled Maintenance. Such notice shall

also specify the estimated time required for such Scheduled Maintenance and the estimated date on which such Buses will be made available for operations.

17.2.4 Any maintenance or repair of a Bus, not being Scheduled Maintenance, and arising out of any reason including Breakdown, unsatisfactory performance, defects, deficiencies, accident, vandalism, natural calamity, fire, riots, arson or negligence, shall be undertaken by the operator as unscheduled maintenance (the " unscheduled maintenance"). The Parties expressly agree that any and all unscheduled maintenance shall be undertaken promptly to procure efficient, safe and reliable operation of the relevant bus. Any and all Unscheduled Maintenance shall form part of the Maintenance Obligations and shall be undertaken by the service provider at its own cost and expense. Provided that if any unscheduled mmaintenance is required to be undertaken as a direct result of a breach by the Authority of its obligations under this Agreement, then any reasonable documented costs and expenses for such Unscheduled Maintenance shall be reimbursable by the Authority to the Operator.

17.2.5 The Operator shall, within 3 (three) days of the arrival of a Bus at a Maintenance Depot for Unscheduled Maintenance arising out of the reasons specified in Clause 17.2.4, furnish to the Authority in reasonable detail the particulars of defects, deficiencies or damages and the estimated cost of repair thereof. Upon completion of repairs hereunder, the Operator shall furnish to the Authority the actual cost of repairs, if such costs are to be borne by the Authority pursuant to Clause 17.2.4 above.

17.3 Spares and Consumables

17.3.1 During the Contract Period, the Service Provider shall, at its own cost and expense, replace and install materials which get consumed or wear out beyond serviceable limits in the normal course of operation of a Bus, including but not limited to oils, lubricants, brake blocks and pads, rubber parts and hoses, fuses, light fittings, bulbs, seats, curtains, filters, look out glass, bearings and insulators (the "**Consumables**"). Save and except as provided in this Agreement, the Consumables shall be replaced or installed, as the case may be, by the Service Provider when a Bus is brought to a Maintenance Depot in accordance with the provisions of this Agreement.

17.3.2 During the Maintenance Period, the Service Provider shall, at its own cost and expense, replace any part or all equipment of a Bus, which may be defective, damaged or worn out, by a substitute thereof (the "**Spares**") for the efficient operation and maintenance of a Bus.

17.3.3 The Parties expressly agree that the Service Provider shall, but not limited to supply and install doors, window panes, seats, gear case, axle-boxes, brake gear components, wind shield, and under-gear piping/cabling at its own cost and expense; provided, however, that if

such supply and installation have arisen on account of negligence of Authority staff, accidents, vandalism, arson, riots or natural calamities, the Authority shall be liable for the costs and expenses incurred by the Operator as a result.

17.3.3 The Service Provider shall maintain a sufficient inventory of Consumables and Spares for timely repair and maintenance of Buses in conformity with its Maintenance Obligations and shall ensure that upon Termination, hand over such spares and consumables to the Authority with adequate inventory as may be required for a period of 6 (six)months of operations of the buses based on Good Industry Practice.

17.4 Maintenance Requirements

The Operator shall procure that at all times during the Contract Period, each and every Bus conforms to the maintenance requirements set forth in Schedule-I (the "**Maintenance Requirements**").

17.5 Damages for breach of Maintenance Obligations

17.5.1 In the event that the Operator fails to repair or rectify any defect or deficiency in a Bus, as set forth in the Maintenance Requirements and within the period specified therein, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled to recover damages, to be calculated and paid for each day of delay until the breach is cured, 0.01% (zero point zero one per cent) of the Performance Security. Recovery of such Damages shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

17.5.2 The Damages set forth in Clause 17.5.1 may be assessed and specified forthwith by the Authority; provided that the Authority may, in its discretion, demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and the Operator is otherwise in compliance with its Maintenance Obligations. The Operator shall pay such Damages forthwith and, in the event, that it contests such Damages, the Dispute Resolution Procedure shall apply.

17.6 Demobilisation due to Emergency

17.6.1. If in the reasonable opinion of the Authority, there exists an Emergency which warrants the demobilisation of a Bus, the Authority shall be entitled to demobilise the Bus for so long as such Emergency and the consequences thereof warrant; provided that such demobilisation and particulars thereof shall be notified by the Authority to the Operator without any delay, and the Operator shall diligently carry out and abide by any reasonable directions that the Authority may give for dealing with such Emergency.

17.6.2 The Operator shall re-mobilise the Bus as quickly as practicable after the circumstances leading to its demobilisation have ceased to exist or have so abated as to enable the Operator to re-mobilise the Bus and shall notify the Authority of the same without any delay. For the avoidance of doubt, the

demobilisation of any Bus pursuant to this Clause 17.6 shall not affect the Annual Assured Bus Kilometres and the Authority shall continue to pay the Fee to the Operator in accordance with Article 22.

17.7 Authority's right to take remedial measures

In the event the Operator does not maintain and/or repair the Bus in conformity with the provisions of this Agreement and the Maintenance Manual, and fails to commence remedial works within 15 (fifteen) days of receipt of a notice in this regard from the Authority, the Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Operator, and to recover its cost from the Operator. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Operator to the Authority as Damages. The Parties agree that the Authority shall not in any manner be liable for any damage to, or deterioration in, a Bus occurring on account of the remedial measures taken hereunder.

17.8 Overriding powers of the Authority

17.8.1 If in the reasonable opinion of the Authority, the Operator is in material breach of its obligations under this Agreement and, in particular, the Maintenance Obligations, and such breach is causing or is likely to cause material hardship to the Users or render the use of a Bus unsafe for operation, the Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice, require the Operator to take reasonable measures immediately for rectifying or removing such hardship or unsafe condition, as the case may be.

17.8.2 In the event that the Operator, upon notice under the provisions of this Clause 17.8, fails to rectify or remove any hardship or unsafe condition affecting the operation of any Bus, within 15 (fifteen) days from the date of the notice, the Authority may exercise overriding powers under this Clause 17.8 and take over the performance of any or all the obligations of the Operator to the extent deemed necessary by it for rectifying or removing such hardship or unsafe situation; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that for any costs and expenses incurred by the Authority in discharge of such obligations, the Authority shall be entitled to recover them from the Operator in accordance with the provisions of Clause 17.7 along with the Damages specified therein.

17.8.3 In the event of a national emergency, adverse weather conditions, civil commotion or any such other event, the Authority may take over the performance of any or all the rights or obligations of the Operator to the extent deemed necessary by it, and exercise such control over the Buses and Maintenance Depots or give such directions to the Operator as may be deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority. It is agreed that the Operator shall comply with such instructions as the Authority may issue in pursuance of the provisions of this Clause 17.8, and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.

17.8.4 The Parties agree that if the Authority takes over the performance of any or all the rights or obligations of the Operator pursuant to Clauses 17.8.1, 17.8.2 or 17.8.3, then:

a. the period during which the Authority has taken over the operation of the Buses shall be excluded for determining compliance with the Key Performance Indicators in accordance with Article 20;

b. the Authority shall continue to pay the Operator for the Annual Assured Bus Kilometres in accordance with Clause 22.4 for the period during which the Authority has taken over the operation of the Buses;

c. the Authority shall bear the cost of electricity, including over and above the Allowed Power Consumption, in accordance with Clause 22.5.1; and

d. the Authority shall be liable for any damage caused to the Buses during the period in which it has taken over the operations of the Buses.

17.9 Restoration of loss or damage to the Buses

Save and except as otherwise expressly provided in this Agreement, in the event that a Bus or any part thereof suffers any loss or damage during the Contract Period from any cause whatsoever, the service provider shall, at its cost and expense, rectify and remedy such loss or damage forthwith so that the Bus conforms to the provisions of this Agreement.

17.10 Modifications to the Buses

The Operator shall not carry out any material modifications to a Bus save and except where such modifications are necessary for the bus to operate in conformity with the specifications and Standards, Maintenance Obligations, Good Industry Practice and Applicable Laws; provided that the Operator shall notify the Authority of the proposed modifications along with particulars thereof at least 15 (fifteen) days before commencing work on such modifications and shall reasonably consider any suggestions that the Authority may make within 15 (fifteen) days of receiving the Operator's proposal. For the avoidance of doubt, all modifications made hereunder shall comply with the Specifications and Standards, Applicable Laws, Good Industry Practice and the provisions of this Agreement.

17.11 Operation Assistance

17.11.1 The Operator shall operate the Buses in accordance with the Operation Manual, Applicable Laws, Good Industry Practice and the provisions of this Agreement.

17.11.2 The Operator shall ensure that its staff are familiar and well versed with the Operation Manual.

17.12 Excuse from performance of obligations

The Operator shall not be considered in breach of its obligations under this Agreement in connection with the Operations and Maintenance of the Buses and Maintenance Depots if it is unable to perform its obligations on account of any of the following:

(a) an event of Force Majeure;

(b) measures taken to ensure the safe operation of Buses, except when unsafe conditions occurred because of failure of the Operator to perform its obligations under this Agreement; or

(c) a breach by the Authority of its obligations under this Agreement and which directly affects the Operator's ability to comply with any of its obligations;

(d) delay by the Authority in handing over the Maintenance Depots by the Scheduled Maintenance Depot Handover Dates in accordance with the terms of this Agreement;

(e) any road accidents which prevent the Operator from complying with the requirements of this Agreement, including the Key Performance Indicators, provided that the Operator has complied with the notice requirements set out in Clause 13.11.3 and that such accidents were not caused due to reasons attributable to the Operator;

(f) grid failures, power outages or inadequate power supply to the extent it affects the Operator's ability to adequately

charge the Buses in accordance with the requirements prescribed in the Operations Manual;

(g) blockade on any Operational Route caused by any Government Instrumentality;

(h) compliance with a request from the Authority or the directions of any Government Instrumentality.

Provided that, any such inability to comply with its obligations shall be notified by the Operator to the Authority without any delay. Notwithstanding the foregoing, the Operator shall in the event that it is prevented from performing any time-bound obligation in connection with the Operations and Maintenance of the Buses and Maintenance Depots on account of any of the events set out in this Clause 17.12, receive an extension of time for the performance of such obligation with the period of such extension being equal to the period during which any of the events set out in this Clause 17.12 subsist.

17.13 Warranties for defects and deficiencies

17.13.1 The Operator warrants that:

a. all equipment, supplies, plant and machinery at the Maintenance Depots as well as components, parts and systems forming part of a complete Bus including the Spares and Consumables shall be new and of utility-grade quality and in full conformity with the Specifications and Standards, Designs and Drawings, Applicable Permits, Applicable Laws and the other requirements of the Agreement, of suitable quality and fit for the purpose for which they are intended and be free from defects, deficiencies and defective workmanship;

b. all Buses shall be free from defects, shall comply with all Applicable Laws and Good Industry Practice and will be capable of operating in the manner intended and contemplated in the Specifications and Standards, Designs and Drawings, Applicable Permits, Applicable Laws and the Agreement;

c. the manufacturing, assembly and supply of the Buses shall be performed in accordance with the standards of professional care, skill, diligence and competence generally accepted in the international independent manufacturing industry applicable to engineering and manufacturing and project management practices for manufacturing projects of similar size and type as the Project, when operated in accordance with Good Industry Practice; and

d. the Buses shall be capable of performing and would continue to perform as per this Agreement.

17.14 Maintenance Depots

17.14.1 For discharging its Maintenance Obligations under and in accordance with the provisions of this Agreement, the Operator shall also operate and maintain the Maintenance Depots in accordance with the Specifications and Standards, Good Industry Practices and the provisions of this Agreement.

17.14.2 Subject to adequate space being made available at the Maintenance Depots by the Authority, the Maintenance Depots shall have provisions for the repair and maintenance of at least 50 (fifty) Buses at a time as well as parking facility for the entire fleet of Buses deployed at such depot.

ARTICLE 18
SAFETY REQUIREMENTS

18.1 Safety Requirements

The Service Provider shall develop, implement and administer a safety programme for providing a safe environment on or about the Buses and Maintenance Depots, and shall comply with the safety requirements set forth in this Article 18 and Schedule-K (the "**Safety Requirements**").

18.2 Guiding principles

18.2.1 Safety Requirements aim at reduction in injuries, loss of human life and damage to property resulting from accidents on account of the Buses or in the Maintenance Depots, irrespective of the person(s) at fault.

18.2.2 Safety Requirements shall apply to all phases of construction, operation and maintenance with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.

18.3 Obligations of the Service Provider

18.3.1 The Service Provider shall abide by the following to ensure safety of the Buses and Maintenance Depots, human life and property:

(a) instructions issued by the Authority;

(b) applicable Laws and Applicable Permits;

(c) provisions of this Agreement;

(d) relevant standards/guidelines contained in internationally accepted codes; and

(e) good Industry Practice.

(f) have and/or attain all the required permits and licenses as Applicable by Law

18.3.2 The Service Provider shall impart safety training to its employees along with the Authorities and shall at all times be responsible for observance

of safety procedures by its staff, Contractors and agents.

18.3.3 The Service Provider shall be responsible for undertaking all the measures under its control to ensure safe operation of Buses.

18.3.4 The Service Provider agrees that the Authority shall be entitled to inspect any Bus or Maintenance Depot to verify adherence to Safety Requirements and the Service Provider shall be obliged to facilitate such inspection and implement the corrective measures identified in such inspection.

18.4 Safety measures during construction

The Service Provider shall, during construction/upgradation of the Maintenance Depots, provide an environment for procuring the safety of human life and property in accordance with Applicable Laws and Good Industry Practice.

18.5 Annual Safety Report

18.5.1 The Service Provider shall submit to the Authority before the 31st thirty first May of each Accounting Year, an annual report in 10 (ten) copies containing, without limitation, a detailed listing and analysis of all accidents occurring on account of the Buses or in the Maintenance Depots during the preceding Accounting Year and the measures taken by the Service Provider for averting or minimizing such accidents in future ("**Annual Safety Report**").

18.5.2 Once in every Accounting Year, a safety audit shall be carried out by the Authority. It shall review and analyse the Annual Safety Report and accident data of the preceding Accounting Year, and undertake an inspection of the Buses and Maintenance Depots. The Authority shall provide a safety report recommending specific improvements, if any, required to be made in the Buses and Maintenance Depots. Such recommendations shall be implemented by the Service Provider in accordance with Safety Requirements, Specifications and Standards and Applicable Laws.

ARTICLE 19
MONITORING OF OPERATION AND MAINTENANCE

19.1 Monthly status reports

19.1.1 During the Contract Period, the Service Provider shall, no later than 7 (seven) days after the end of each month, furnish to the Authority a monthly report stating in reasonable detail including

- Energy consumption
- Energy efficiency
- Charging duration per day and per location
- State of charge details before each charge
- Breakdown details and the maintenance services performed by the Service Provider on the Buses and the defects and deficiencies that require rectification. The report shall also include Key Performance Indicators achieved by the Buses and the compliance or otherwise with the Maintenance Requirements, Maintenance Manual and Operation Manual. The Service Provider shall promptly give such other relevant information as may be required by the Authority.

19.1.2 The monthly report specified in Clause 19.1.1 shall also include a summary of the key operational hurdles and deliverables expected in the succeeding month along with strategies for addressing the same and for otherwise improving the Service Provider's operational performance.

19.2 Reports of unusual occurrence

The Service Provider shall, prior to the close of each day, send to the Authority, by facsimile or e- mail, a report stating the failures, accidents and unusual occurrences relating to the Buses. A weekly and monthly summary of such reports shall also be sent within 3 (three) days of the closing of each week and month, as the case may be. For the purposes of this Clause 19.2, unusual occurrences on a Bus shall include:

(a) failure of a Bus;

(b) accidents involving a Bus; and

(c) trouble on a Bus during operation.

19.3 Inspection

The Authority shall be entitled to inspect the Buses after any maintenance for evaluating the compliance of Buses with the Maintenance Obligations. It shall make a report of such inspection (the "**Maintenance Inspection Report**") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Maintenance Obligations and notify the Service Provider of the same for taking remedial measures in accordance with the provisions of Clause 19.5. For the avoidance of doubt, any inspection undertaken after a Bus is declared available shall be deemed to form part of Available Hours under the provisions of Clause 17.15.

19.4 Tests

For determining that the maintenance of Bus conforms to the Maintenance Obligations, the Authority may require the Service Provider to carry out, or cause to be carried out, the tests specified by it in accordance with Good Industry Practice. The Service Provider shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of the Authority and furnish the results of such tests to the Authority within 15 (fifteen) days of such tests being conducted. One half of the cost incurred on such test shall be reimbursed by the Authority to the Service Provider. Provided, however, that the Authority shall not bear any costs here under for and in respect of tests which have failed.

19.5 Remedial measures

19.5.1 The Service Provider shall repair or rectify the defects or deficiencies, if any, set forth in the Maintenance Inspection Report or in the test results referred to in Clause 19.3 and furnish a report in respect thereof to the Authority within15 (fifteen) days of receiving the Maintenance Inspection Report or the test results, as the case maybe.

19.5.2 The Authority shall require the Service Provider to carry out or cause to be carried out tests, at the cost of the Service Provider, to determine whether the remedial measures have brought the Buses into compliance with the Maintenance Obligations and Safety Requirements, and the procedure set forth in this Clause 19.5 shall be repeated until the maintenance of Buses conforms to the Maintenance Obligations and Safety Requirements. In the event that remedial measures are not completed by the Service Provider in conformity with the provisions of this Agreement, the Authority shall be entitled to recover Damages from the Service Provider at the rate of 0.01% of the Performance Security and the damages will be recovered from the monthly payment bills.

19.6 Responsibility of the Service Provider

19.6.1 It is expressly agreed between the Parties that any inspection carried out by the Authority or the submission of any Maintenance Inspection Report by the Authority as per the provisions of this Article 19 shall not relieve or absolve the Service Provider of its obligations and liabilities hereunder in any manner whatsoever.

19.6.2 It is further agreed that the Service Provider shall be solely responsible for adherence to the Key Performance Indicators specified in Article20.

19.6.3 The Service Provider shall not allow operation of any other Bus owned by the Service Provider in competition with Authority Buses without prior approval from Authority.

19.6.4 The Service Provider shall avoid unauthorized operation of buses after the scheduled duty hours and shall not allow passengers in the interim routes.

19.6.5 Service Provider shall allow the BMTC Line Checking Inspector to check the buses in any route during Operations the Service Provider shall stop the bus when Line Checking inspector signal to stop the bus enroute.

19.7 Real Time Data Access

The Service Provider agrees that it shall provide the ITS system as per the AIS 140 guidelines along with the Buses. The feed from the ITS system shall be provided in the required format of the Authority to be integrated to their ITMS system for real time data monitoring pertaining to the performance of the Service Provider under this Contract. The Service Provider shall install all the ITMS equipment as outlined in Schedule-Q hereto. The Service Provider further agrees to integrate the ITS equipment provided with the Buses to the Bus CAN (“Controlled Area Network”) to enable the Authority to access real time health of the Bus. The Service Provider agrees that failure to provide access to such data during the Contract Period shall be deemed to be an Service Provider Event of Default.

ARTICLE 20
KEY PERFORMANCE INDICATORS

20.1 Key Performance Indicators

Without prejudice to the obligations specified in this Agreement, the Service Provider shall operate and maintain every Bus such that it achieves the performance indicators comprising Reliability, Operation, Punctuality, Frequency, Safety, upkeep of Bus and conformity with ISO certification, as specified in this Article 20, Good Industry Practice and Applicable Laws (the "**Key Performance Indicators**").

20.2 Availability

20.2.1 During the Term, a Bus shall be deemed to be available for operation at all times, save and except the Non-Available Hours specified in Clause 20.2.2, and the sum of hours in a Year when a Bus is deemed to be available shall be reckoned as available hours (the "**Available Hours**").

20.2.2 The Parties agree that the period for which a Bus is deemed to be not available for operation (the "**Non-Available Hours**") shall be reckoned as follows:

(a) In the case of Scheduled Maintenance, the period between entry of a Bus at the Maintenance Depots and the time when it is declared by the Service Provider as available for operation;

(b) in the case of Unscheduled Maintenance arising out of the reasons specified in Clause 17.12, the period between entry of a Bus at the Maintenance Depots and the time when it is declared by the Service Provider as available for operation; provided that the total period of Unscheduled Maintenance to be reckoned hereunder shall be subject to the remission specified in Clause 20.2.3; and

(c) in the case of Unscheduled Maintenance arising out of reasons attributable to the Service Provider, the period between the time of occurrence of an event that renders the Bus unfit or unavailable for service, and the time when it is declared by the Service Provider as available for operation; provided that the time taken for transporting the Bus from its location to the Maintenance Depots shall be deemed to be 24 (twenty four) hours and shall form part of Non-Available Hours hereunder.

20.2.3 In computing the Non-Available Hours for the Unscheduled Maintenance specified in Sub-clause (b) of Clause 20.2.2, the following time shall be excluded by way of remission, namely:

(a) In the event that the Unscheduled Maintenance is caused by an event or reason specified in Clause 17.12, 85% (eighty five per cent) of the Non-Available Hours;

(b) upto 1 (one) hour of Unscheduled Maintenance per month, as

specified in Clause 17.12; and

(c) in the event that the Unscheduled Maintenance is performed when a Bus is stabled, but only after 10:00 pm on any day and before 6:00 am on the following day, 85% (eighty five per cent) of the Non-Available Hours.

20.2.4 The Parties agree that the sum of Available Hours of a Bus, as a proportion of the total hours in any Year, shall be deemed to be the availability of that Bus in that Year (the "**Availability**"). For the avoidance of doubt and by way of illustration, if the total hours of a Bus in its 1st (first) quarter of operation are 100 (one hundred) and if its Available Hours are 100 (hundred), the Availability hereunder shall be 100 (hundred per cent).

20.2.5 The Service Provider shall procure that the Availability of each Bus in every Year shall be at least 100% (hundred per cent) (the "**Guaranteed Availability**").

20.3 Declaration of Availability

20.3.1 Unless otherwise notified by the Service Provider, the Availability of a Bus shall be deemed to be 100% (hundred per cent) at all times.

20.3.2 The Service Provider shall notify, no later than 7 (seven) days prior to the commencement of a month, its maintenance schedule for that month and any reduction in Availability arising as a result thereof. The Service Provider shall, as soon as may be, notify any modifications of its maintenance schedule and shall confirm, with or without modifications, the reduction in Availability no later than 24 (twenty four) hours prior to its occurrence.

20.3.3 The service provider shall submit a report on scheduled kilometers, actual kilometers operated and cancelled kilometers at the end of every week. The report shall also specifiy the reasons for cancellation of buses

20.3.4 Save and except as provided in this Agreement, in the event that Availability at any time is determined to be lower than 100% (hundred per cent) of the Availability or the reduced Availability notified hereunder, an event of mis-declaration of Availability (the "**Mis-declaration**") shall be deemed to have occurred and Availability for the relevant Year shall, be deemed to be reduced by Non-Available Hours equal to 100 km for each event of Mis-declaration. The Service Provider agrees that for every Mis-declaration, it shall pay to the Authority 0.2% of the Performance Security as Damages and the damages will be recovered from the monthly payment bills.

20.4 Reliability

20.4.1 The Parties agree that the average reliability of all Buses in the Fleet

shall be measured on a quarterly basis in terms of the number of Breakdowns per 10,000 (ten thousand) kilometres travelled by the Buses (the "**Reliability**").

20.4.2 The Reliability hereunder shall be equal to the quotient of the cumulative distance travelled by all Buses divided by the aggregate number of Breakdown of all such Buses multiplied by 10,000 (ten thousand).

20.4.3 The Service Provider agrees that the Reliability for the Buses determined in accordance with Clause 20.4.2 shall be *equal to or less than 0.5 (Zero point five*).

20.5 Operation of Buses

20.5.1 The Service Provider shall at all times procure that, save and except any damage caused by theft, arson or vandalism:

(a) there are adequate lighting arrangements inside the Buses, in conformity with the Specifications and Standards;

(b) the temperature inside the Buses can be maintained in accordance with Maintenance Requirements;

(c) the Buses are clean, hygienic and free of odour;

(d) seats, windows, doors, floor mat, curtains and all fixtures in the Buses are operational; and

(e) all bus information systems and lighting systems function efficiently,.

20. 6 Punctuality

20.6.1 Punctuality shall be measured on a monthly basis in terms of the percentage of on-time start of trips to the total number of trips operated on a daily basis ("**Start Punctuality**"). The total number of trips starting/arriving late during the month will be recorded and subtracted from the number of trips operated to arrive at the on-time trips operated figures separately in each case.

20.6.2 The Service Provider agrees that the Punctuality for arrival at the respective destination shall be measured on a monthly basis in terms of the percentage of trips with on-time arrival at destination to the total number of trips operated on a daily basis ("**Arrival Punctuality**").

20.6.3 The Parties agree that the Service Provider may exercise a relaxation equivalent to 5 (five) minutes, for start of the bus schedule, and 10% (ten percent) of the subsequent scheduled trip time (subject to a maximum of 15 (fifteen) minutes) for start of subsequent schedules and arrival of

trips.

20.6.4 Any delay or missing trips on account of Traffic congestion, Power non-availability will not be attributable to Operator.

20.7 Frequency:

20.7.1 The frequency of operation of Buses shall be measured on a monthly basis in terms of percentage of the cumulative trips travelled by all Buses to the aggregate number of scheduled trips **(**"Trip Frequency"**)** and a percentage of the cumulative Bus Kms operated to the aggregate scheduled Bus Kms **(**"Bus Kms Frequency"**),**respectively**.**

20.7.2 The Buses shall be operated continuously such that the first Bus in each direction shall depart no later than start time and the last Bus shall terminate not earlier than end time at the frequency specified in the Operational Plan and this Agreement; provided that on Sundays the duration of services may be reduced by 6 (six)hours.

20.7.3 The Buses in each direction shall be operated such that the difference between arrival time of two Buses at any bus stop shall not exceed beyond 5 (five) minutes as specified in the Operational Plan; provided that such difference may be increased, subject to a maximum of 15 (fifteen) minutes, depending upon the number of Users in the respective hour.

20.7.4 The average speed of Bus movement from the beginning point to the termination point during any hour of the day, including stops, shall be as defined by the Authority from time to time as per the operational plan.

20.8 Safety of Operations

20.8.1 The Parties agree that the Safety of Buses in the Fleet shall be measured in terms of inverse of number of accidents per 10,000 Kms (ten thousand kilometres) (the "**General Safety**") and the number of fatalities per 1,00,000 Kms (one lakh kilometres)] (the "**Severe Safety**"), respectively. The General Safety and Severe Safety shall be calculated in terms of cumulative Bus Kms operated divided by number of accidents multiplied by 10,000 (ten thousand) and cumulative Bus Kms operated divided by number of fatalities multiplied by 1,00,000 (one lakh),respectively.

20.8.2 The Service Provider agrees that the General Safety and the Severe Safety, as the case may be,

determined in accordance with Clause 20.8.1 shall be equal to or more than 1(one).

20.9 Certification

20.9.1 The Service Provider shall, prior to 1st Anniversary of the COD, achieve

and thereafter maintain throughout the Contract Period but not limited to; ISO 9000:2005, ISO 14000:2004, ISO 18000:2007 and ISO 50000:2011 certification or a substitute thereof for the Maintenance Depots, and shall provide certified copies thereof to the Authority forthwith.

20.9.2 In the event of default in obtaining the certification specified in Clause 20.9.1, the Service Provider shall, within 15 (fifteen) days thereof, submit to the Authority an action plan that sets out the actions proposed to be taken by the Service Provider for rectifying its deficiencies and obtaining such certification for the Maintenance Depots.

20.9.3 If the period of default in obtaining the ISO certification under this Clause 20.9 shall exceed a continuous period of 90 (ninety) days, the Service Provider shall pay Damages to the Authority in an amount equal to 5% (five per cent) of the Performance Security and the damages will be recovered from the monthly payment bills.

.

20.10 Monthly Report

The Service Provider shall, no later than 7 (seven) days after the end of each month, furnish to the Authority a report stating the Key Performance Indicators of each Bus as measured on a daily basis. The Service Provider shall promptly give such other relevant information as may be required by the Authority but not limited to. Authority may request to share data of operations and maintenance as per a prescribed format.

Key performance indicators	
Bus availability	
Scheduled Kms	
Operated Kms	
Cancelled Kms	
- Due to battery issues	
- Due to non-availability of crew	
Reliability	
Punctuality	
Frequency	
Safety of operations	

20.11 Passenger Charter

The Service Provider shall publish and implement a charter articulating the rights and expectations of Users (the "**Passenger Charter**") substantially in the form specified in Schedule-N. The Service Provider shall at all times be accountable and liable to Users in accordance with the provisions of the Passenger Charter and Applicable Laws. The key performance indicators for users also includes a count of passenger complaints, report by authority's officials, traffic police against the

operating behavior.

20.12 Damages for failure to achieve key performance indicators

20.12.1 The Service Provider shall ensure and procure compliance of each of the Key Performance Indicators specified in Article 20 and for repeated shortfall in performance during each month, as may be determined by the Authority for reasons to be recorded in writing based on passenger feedback and inspections by the Authority, from the monthly bill and/or of the Performance Security for such shortfall in any such performance indicator.

20.12.2 The total liability of all the key performance indicator specified in Article 20 under this Contract shall be capped at 3% of the Total Project Cost during the Contract Period. The damages for failure to achieve the Key Performance Indicators shall be consolidated on a monthly basis by the Authority and shared with the Service Provider within 7 (seven) days of the end of the respective month. All such damages shall be deducted from the Service Provider monthly payment after mutual discussion. Further, if key performance indicator deteriorate and damages as stated above continue at 3% for further 3 consecutive months, the Authority shall increase the damages to 4% of the monthly project cost for subsequent months. In case of further detoriation in key performance indicator the Authority will refer this matter for imposing higher damages to the steering committee.

20.13 Other Key Performance Indicators to be complied by the Service Provider

The following Key Performance Indicators shall be used to monitor the performance of the Service Provider on a daily basis and KPIs will be calculated depot wise which would to aggregated to the total performance in a month.

S.No.	Frequency	Quality Parameters	Service Level Benchmarks	Fine/ KM for Violation based on SLBs	Calculation Techniques
1	Monthly	Trip Efficiency	95%	Cancelled KM	No of operated KMS/ Total of Scheduled KMS. *Note: Excludes all km lost due to:* *- conductor absence or actions* *- strikes and religious parades*
2	Monthly	Trip Frequency and Bus Frequency as the case may be	95%	Cancelled Km	Percentage of the cumulative trips travelled by all Buses to the aggregate number of scheduled trips
3	Quarterly	Reliability	95%	Cancelled Kms	Average reliability of all Buses in the Fleet shall be measured on a quarterly basis in terms of the number of Breakdowns per 10,000 (ten thousand) kilometres travelled by the Buses. In addition, Rs.500 per Break down ,
4	Daily	Safety Operations	100%	Rs.15,000/- per fatality + Actual expenses to be borne by the operator	No. of fatalities for which the Driver is found to be responsible. Any other liability and or claim imposed on the Authority. *Note: Based upon Police &* the Authority *investigation findings and final decision of MD of* the Authority*.*
5	Monthly	Fleet Utilization	95%	Cancelled KM	No of Buses Operated / Total No of Buses Scheduled to Operate. *Note: Subject to adjustment for buses not operated through no fault of the Service Provider*
6	Daily	Strike by Service Provider	100%	INR 15,000 per Bus/Day for full cancellation and partial operation (50% and above kms cancelled)	No. of Buses off Road / Total No. of Scheduled Buses *Note: If the Service Provider Stops operating buses for any reason whatsoever except Force Majeure.*
7	Monthly	Punctuality of Buses a) Late Departure	98%	INR 500 /- Punctuality below 98%	No. of cases *Note: includes :* *1. Delay of more than 15 minutes beyond the allotted trip time except in cases of:*

S.No.	Frequency	Quality Parameters	Service Level Benchmarks	Fine/ KM for Violation based on SLBs	Calculation Techniques
		b) Early Arrival	98% for the first 3 (three) years from COD 95% after 3 years from COD	INR 500 /- Punctuality below 98% INR 500 /- Punctuality below 95%	*- Major traffic congestion* *- Conductor actions/absence* *- Strikes, Civil Disobedience*
8	Daily	Drivers Login / Log off into ITMS /AFC System at Start of Shift and also for each Trip as Trained and Directed by the Authority	100%	INR 250 / Case	No. of Cases / No. of Trips where Login, Logout / Trip Change, etc.
9	Daily	Bus Cleaning	98%	INR 500 / Reported cases	No. of instances of Buses failing to achieve the agreed standard of cleanliness at commencement of service. Note: Cleanliness means clean and washed bus inside and outside at the start of the shift.
10	Daily	Malfunctioning Passenger Doors	100%	INR 500 / Case	No of Passenger Doors malfunctioning.
11	Daily	Broken / Loose / Missing Passenger Seat	100%	INR 1000 / Case / Bus / Day	No of Seat malfunctions not resolved within 24 hours since identified as malfunctioning.
12	Daily	Damage or Missing of & to any ITMS /AFC Equipment in the Buses.	98%	INR 500/ per case per day	No of cases of Damage / Missing equipment / Total No of pieces of ITMS / AFC Equipment in the Buses
13	Daily	The Driver is not carrying a Driving License / RTO Badge	0%	INR 2500 / Bus / Day	No of Cases / Total No of Scheduled Drivers as Identified through Traffic Police, the Authority , Public, Random Checks Driver shall be removed from operations immediately
14	Daily	Use of Cell Phone by Driver While Driving	100%	INR 5000 / Incident	No of Cases as Identified through Traffic Police, the Authority , Public, Random Checks
15	Daily	Skipping of Designated Stops without	100%	INR 100 / Stop Skipping Case	No of Stops Skipped. As Identified through Traffic Police, the Authority, Commuters, Random

S.No.	Frequency	Quality Parameters	Service Level Benchmarks	Fine/ KM for Violation based on SLBs	Calculation Techniques
		Permission			Checks
16	Daily	Parking Buses in Undesignated Areas without Prior Permission	100%	INR 1000 / Case	Total No of Cases of Parking without prior permission outside designated Areas. As identified by authority/traffic police/ITS report
17	Daily	Change in Route without Permission from the Authority	100%	INR 500 / Case	Total No of Route Changes without Permission from the Authority. *Note: As identified through Authority/public*
18	Daily	Stopping and / or Forcing Passengers to alight at Non Designated Stops Not stopping bus at designated bus stop and obstructing movement of other vehicles	100%	INR 250 / Case	Total No of Cases Even if passenger forces Driver, the penalty shall be imposed on Service Provider. No. Of cases identified through public/Authority
19	Daily	Signal Jumping/Zig-Zag Parking/ Stopping on the Zebra Crossing at traffic signals other than giving way to the ambulance / Police	100%	INR 500 / Case	Total No of Cases. *Note: As identified through traffic police and random checks*
20	Daily	Not receiving tracking data to BMTC application (AVLS)	100%	INR 100 / Bus / Day	Every device should send minimum 3600 packets shall be received at AVLS (or ITS).
21	Daily	Drunk Driving	0%	INR 10,000 / Case	No of Cases. Concerned driver should be terminated for minimum three months. If Incident repeats more than 5 times, the Service Provider would be terminated at the discretion of the Authority.
22	Daily	Over Speeding/Rash Driving/negligent driving	100%	INR 500 / Case	No. of Cases *Note: As identified through Authority/public*

S.No.	Frequency	Quality Parameters	Service Level Benchmarks	Fine/ KM for Violation based on SLBs	Calculation Techniques
23	Daily	Failure to follow CCC instructions/ BMTC Authority	100%	INR 250 / Case/ Day	No of Cases.
24	Daily	Misbehaviour by Driver while on duty with passengers / public/ co-riders	100%	INR 500 / Case / Day	No. of Cases Identified through public /Authority
25	Daily	Not closing passenger doors while bus is in operation	100%	INR 250 / Case	No. Of cases identified through public/Authority
26	Daily	Not wearing uniform and shoes	100%	INR 250 / Case	No. Of cases identified through public/Authority
27	Daily	Smoking while driving	100%	INR 250 / Case	No. Of cases identified through public/Authority
28	Daily	Driving Buses with lights (head lights, tail lights, indicator lights, brake lights) malfunctioning / switched off, Broken side, front or back window, dents or impacts/ protruding covers/cases **Driving bus without side mirrors, wipers/non-functional wipers, LED display boards and voice announcement system.`**	100%	INR 500 / Case	No. Of cases identified through public/Authority
30	Daily	Deserting the bus	100%	INR 250/ Case	No. Of cases identified through public/Authority

(In case of applicability of multiple penalties for the same KPI/SLA, any one penalty whichever is higher shall be imposed for Sl No. 12 & 20 above.)

Part IV
Financial Covenants

ARTICLE 21 FINANCIAL CLOSURE

21.1 Financial Close

21.1.1 The Service Provider hereby agrees and undertakes that it shall achieve Financial Closure within 180 (One hundred and eighty) days from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding 120 (one hundred and twenty) days, subject to payment of Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day of delay, and for a further period not exceeding 80 (eighty) days, subject to payment of Damages at the rate specified in Clause 4.2; provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 90 (ninety) days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred solely as a result of any default or delay by the Authority in procuring satisfaction of the Conditions Precedent specified in Clause 4.1.2 or due to Force Majeure. For the avoidance of doubt, the Damages payable hereunder by the Service Provider shall be in addition to the Damages, if any, due and payable under the provisions of Clause4.2.

21.1.2 The Service Provider shall, upon occurrence of Financial Close, notify the Authority forthwith, and shall have provided to the Authority, at least 2 (two) days prior to the Financial Close, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Service Provider, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders.

21.2 Termination due to failure to achieve Financial Close

21.2.1 Notwithstanding anything to the contrary contained in this Agreement, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 21.1.1 or the extended period provided there under, all rights, privileges, claims and entitlements of the Service Provider under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Service Provider, and the Agreement shall be deemed to have been terminated by mutual agreement of the Parties. For the avoidance of doubt, it is agreed that in the event the Parties hereto have, by mutual consent, determined the Appointed Date to precede the Financial Close, the provisions of this Clause shall not apply.

21.2.2 Upon Termination under Clause 21.2.1, the authority shall be entitled to encash the Bid Security and appropriate the proceeds thereof as Damages; provided, however, if Financial Close has not occurred solely as a result of the authority being in default of any of its obligations under Clause 4.1.2, it shall, upon Termination, return the Bid Security forthwith

along with the Damages due and payable under Clause 4.2. For the avoidance of doubt, it is expressly agreed that if the Bid Security shall have been substituted by Performance Security, the authority shall be entitled to encash there from an amount equal to Bid Security.

ARTICLE 22
FEE

22.1 Fee

22.1.1 In consideration for undertaking the Project, the Authority shall pay the Service Provider, based on the total distance travelled by each Bus, Operated by the Service Provider ("**Bus Kilometres**") in fulfillment of the Service Providers obligations under this Agreement ("**Fee**").

22.1.2 The Fee shall be fixed except where varied or adjusted in accordance with this Article20 and 21.

22.1.3 The Parties agree that the Bus Kilometre shall comprise:

(a) Distance travelled by a Bus assigned on a particular Route as per the Operational Plan;

(b) Distance travelled by a Bus from the Maintenance Depot to the first point of loading passengers at the commencement of its service on a Day;

(c) Distance travelled by a Bus from its last Bus Stop as per the Operational Plan to the Maintenance Depot at the end of the day's service; and

(d) Distance travelled by a Bus before, during and after operations as per the Operational Plan for charging of Buses at the Maintenance Depot/ Opportunity charging location/third party charging locations, based on the approval by authority. Any Distance travelled for charging other than the Maintenance Depot/ Opportunity charging location/third party charging locations shall not be considered as Bus Kilometers operated by the Service Provider.

(e) Distance travelled by a Bus without passengers which is outside the Operational Plan but approved by the Authority for meeting specific requirements.

22.1.4 The Service Provider agrees and acknowledges that a Bus Kilometre for the purpose of payment of Fee, shall not include any Kilometre travelled by the Bus to any maintenance facilities other than the Maintenance Depot or for any travel not authorized by the Authority.

22.1.5 The Service Provider shall compute and provide to the Authority, for every month, the total number of kilometres that a Bus has travelled for the period being reckoned for the purpose of raising invoice along with the support proof of completed documentation from the depots. Such calculation shall be made using the ITS to be installed by the Service Provider and as approved by the Authority and calibrated with the supervision of the Authority's Representative using Odometer Reading of each Bus. In the event the Odometer for any Bus is non-functional or does not provide accurate reading, the Fee for such Bus shall be based on the Bus Kilometre for the respective Bus based on the manual audit conducted by the Authority for each route multiplied with the Per

Kilometre Fee ("**PK Fee**"). For the avoidance of any doubt, if the ITS installed in the bus is not working or is not being used by the Driver in way whatsoever as directed by the Authority, it shall be considered as Service Providers Breach and all applicable Service Level Parameters and any other applicable deduction shall be made from the PK Fee payable to the Service Provider.

22.2 Basis of Payment

22.2.1 The Service Provider shall be paid for Bus Kilometre plied by the total number of Buses operational for that particular day, at PK Fee quoted by the Service Provider in its Proposal.

22.2.2 The Subsidy shall be disbursed by Authority to the Service Provider in following manner subject to submitting Bank Guarantee equivalent as indicated in Article 9 of MSA.

S.No.	**The activity being completed**	**Percentage of demand incentive to be released**
1.	After issue of supply order and signing of the Master Service Agreement by Authority with Successful Bidder; as mobilization advance.	20%
2.	Delivery of Buses*	40%
3.	After 6 months of the successful commercial operation of Buses**	40%

Note:

*: Successful delivery and Deployment of the Buses at Bengaluru as per the provisions of this Agreement.

**: Successful commercial Operation shall mean breakdown free operation of deployed buses for 6 Months from the COD for Buses. In case of any bus failing to complete successful commercial operation, the Service Provider shall replace such bus with a new bus having similar specification and design. Such new bus shall be required to complete successful commercial operation for 6 months from the date of its deployment.

22.3 Payment of Fee

22.3.1 The Service Provider shall submit an invoice in respect of the Bus Kilometres plied by each Bus put into Commercial Operation at the end of every 30/31 (thirty) days. The invoice shall also include any cost, or Damages or any other charges that the Service Provider is entitled to recover from the Authority in terms of this Agreement (hereinafter together referred as **"Invoice Amount"**);

22.3.2 The Authority shall within a period of 30 (thirty) days from receipt of the invoice, subject to verification of the invoice against the records that it has in relation to the Bus Service, Fine to be levied by the Authority as per Key Performance Indicators defined in Article 20 and submission of proof of payments towards PF and ESI make the payments. All payments shall be made by the Authority to the Service Provider after making

applicable deductions such as penalties and any tax at source under Applicable Law.

22.3.3 The payment for Bus Kilometre up to Annual Assured Bus Kilometre deployed shall be calculated as:

Fee = PK Fee X Bus kilometer X n
where n is the number of Buses

22.4 Annual Assured Kilometers

22.4.1 The Authority agrees that the Operational Plan shall ensure the average Bus Kilometres scheduled across all buses in a continuous period of 12 (twelve) calendar months, commencing from the Commercial Operation Date of the respective Buses, will be no less than 63,000 km (Sixty three Thousand kms) (the "**Annual Assured Bus Kilometre**").

22.4.2 In the event the Authority is unable to demand from the Service Provider Bus Kilometre up to Annual Assured Bus Kilometre, the Authority will pay to the Service Provider, in addition to the payments made for Bus Service based on invoices presented by the Service Provider, an amount (the "**Annual Assured Payment Amount**").

22.5 Payment for underutilized kilometre

22.5.1 If the actual Bus Kilometres is below the assured utilization over a period of six months, then the payment for any underutilized kilometers shall be calculated on the following basis:

Payment for underutilized kilometers:
= [(Assured km of all contracted buses for the six month period – Actual bus kilometres operated by all available fleet during the relevant period of six calendar months) X PK Fee X 0.75]

22.5.2 The determination of whether Annual Assured Payment Amount is due shall be done at the end of a period of 6 (six) months. For the sake of convenience in billings 6 months period will be considered starting from April to September and October to March. In case buses are provided for operation in between months, assured kms shall be calculated on prorata basis till the end of either september or march month, taking into consideration date of operation of entire fleet. From subsequent period, 6(Six) consecutive calender month will be considered.

The Authority will provide the Service Provider with a notice of the calculation with the supporting data (the kilometres travelled by each of the Bus comprising the available fleet).

22.5.3 In the event of the Service Provider not making available the full fleet, the payment will be restricted to the actual fleet made available. The Service Provider will be entitled for Minimum Half Yearly Assured Payment Amount only if he has maintained 100% fleet availability every month.

22.5.4 The Authority shall have right to compute on its own and verify the Half Yearly Assured Kilometres. The Authority shall compute and provide to the Service Provider, every quarter from the COD for the respective lot of buses, the total number of Kilometres that the available fleet has travelled for the aforesaid period. Such calculation shall be made using

GPS and in case of absence of GPS, with the help of Authority staff or its authorized agency.

22.5.5 In case kms cancelled due to breakdowns, accidents, vehicle repair etc such km shall not be considered as bus kms and for under utilized kms.

22.6 Payment for Excess Kilometres

22.6.1 If the Bus operated under this Agreement exceed the Half Yearly Assured Bus Kilometres, then the payment applicable for such excess kilometres shall be calculated as follows:

Payment for excess kilometre =
[(Actual kilometres Operated by all available buses within contracted buses for the six month period– (Assured km of all contracted buses for the six month period)) X PK Fee X 0.5]

22.6.2 The determination of whether Half Yearly Assured Payment Amount is due will be done at the end of a period of six months. For the sake of convenience in billings 6 (six) months period will be considered starting from April to Septemeber and October to March. In case buses are provided for operation in between months, assured kms shall be calculated on prorata basis till the end of either september or march month, taking into consideration date of operation of entire fleet. From subsequent period, 6(Six) consecutive calender month will be considered.

The Authority will provide the Service Provider with a notice of the calculation with the supporting data (the kilometres travelled by each of the Bus comprising the available fleet).

22.6.2 The Authority shall have right to compute on its own and verify the Half Yearly Assured Kilometres. The Authority shall compute and provide to the Service Provider, every quarter from the COD for the respective lot of buses, the total number of Kilometres that the available fleet has travelled for the aforesaid period. Such calculation shall be made using GPS and in case of absence of GPS, with the help of Authority staff or its authorized agency.

22.7 Revision of Fee

22.7.1 The Basic Quoted Rate per kilometer for Hiring of Electric Buses will be revised annually @ 1.0% of Basic Quoted Rate from 3rd year of the date of COD throughout the contractual period to accommodate price escalation on account of cost of maintenance, material and manpower. However, for the first two years, there will be no revision for Hiring Charges

22.7.2 The base rate of electricity as on the date of tender is Rs.4.50/- per unit and Rs.200 per KVA as fixed charges. In case of increase in electricity tariff, in respect of Fixed/energy charges only it will be borne by Authority and if decreases, the difference amount is to be deducted from bidder. The power consumption shall be 1.0 kWh per km as per Bus Specification and if the power consumption exceeds 1.0 KWH, the difference power cost shall be borne bidder only.

22.8 TAXES AND STATUTORY LEVIES

The motor vehicle tax of the bus has to be paid by the Successful Bidder throughout the period of contract/agreement to be executed between the Successful Bidder and BMTC, which shall be levied by the applicable statutory authority from time to time and no compensation/variation in the price shall be paid to the Successful Bidder on this account.

22.8.1 The division of taxes and charges to be borne by the Successful Bidder and BMTC, are listed as follows:

Taxes and Charges	**Parties responsible for payment**
Vehicle Registration Charges	Successful Bidder
Insurance premium for the Buses and other assets owned by BMTC pertaining to this Tender/ Agreement.	Successful Bidder
GST	If applicable will be in the scope of Authority
Stage carriage permit	Authority
Toll Tax	Authority
Passenger Tax	Authority
Motor Vehicle Tax	Authority

22.8.2 The Buses shall have to be insured by the Successful Bidder at its own cost for full comprehensive insurance and regular installments of Insurance shall have to be paid by the Successful Bidder from time to time throughout the period of contract.

ARTICLE 23

TRAINING AND DEPUTATION OF GOVERNMENT EMPLOYEES

23.1 Training

If the Service Provider requests the Authority for engaging the Authority's employees and the Authority agrees to such request, the Service Provider shall provide training to the staff of the Authority in accordance with the provisions of this Article 23 (the "**Training Obligations**").

23.2 Content and duration of training

23.2.1 The content of training shall comprise transfer of knowledge and skills required for operation and maintenance of Buses and Maintenance Depots, as the case may be, and shall be developed by the Service Provider in consultation with the Authority.

23.2.2 The training specified in this Clause 23.2 shall include on-the-job training at the Maintenance Depots and the Service Provider shall provide capacity building workshops to all Drivers.

23.2.3 The duration of training courses shall normally be for a minimum period of 10 (ten) days and a maximum of 30 (thirty) days.

23.2.4 The number of trainees participating in training at any time shall normally be a minimum of 10 (ten) and a maximum of 20(twenty).

23.3 Location of training

23.3.1 Training courses, as may be required by the Authority prior to the Commercial Operation Date, shall be conducted by the Service Provider at the Maintenance Depots or a location nominated by the Authority.

23.3.2 The Service Provider shall procure that the following minimum facilities shall be installed and operated at the training premises:

(a) air-conditioned lecture halls; and

(b) any other facilities and infrastructure required for conducting the training in accordance with the provisions of this Agreement.

23.3.3 The driving training simulator or on bus training to be provided by the Service Provider shall be a computer controlled visual system showing the road and signals ahead and interfaced with the driver's controls. The simulator shall include:

(a) A driver’s desk mounted within a motion simulated driving cab;

(b) a driver instructor’s console including a steering wheel, gear transmission, for inputting information and observing the driver’s technique along with printing facilities for recording the proceedings;

(c) adequate margin in design of software and hardware to accommodate minor changes/ addition of features in future, if required;

(d) a design that shall accommodate road/signaling features of the section through video generated graphics for at least 10 kms (5 kms in each direction);and

(e) other features in accordance with Good Industry Practice.

23.3.4 A computer based training (CBT) module to be provided by the Service Provider shall simulate fault finding steps required to be taken by maintenance staff in accordance with Good Industry Practice.

23.4 Annual training programme

The Service Provider shall prepare and conduct an annual training programme in consultation with the Authority and convey the same to the Authority, at least 3 (three) months prior to the commencement of an Accounting Year.

23.5 Costs of training

The Service Provider shall bear the cost of training, including the faculty and training material.

23.6 Deputation

23.6.1 The Authority shall have the right to second its staff, including Drivers and Conductors on deputation to the Service Provider for performing its Operations and Maintenance Obligations.

23.6.2 The tenure of deputation under this Clause 23.6 shall be for a minimum period of 2 (two) years and a maximum of 7 (seven) years.

23.6.3 Save and except as otherwise provided herein, the conditions of service of the staff on deputation with the Service Provider, including their promotions and emoluments, shall be governed by the applicable rules of the Authority.

23.7 Terms of deputation

23.7.1 The Authority shall pay the salary and allowances to the staff seconded to the Service Provider as though such staff was still on the rolls of the Authority.

23.7.2 The Service Provider shall reimburse to the Authority the salary, allowances and bonus paid by the Authority to the staff on deputation; provided that the medical expenses, if any, shall be borne solely by the Authority.

23.7.3 The Service Provider shall pay to each staff on deputation, a deputation-cum-performance allowance, in accordance with the applicable rules of the Authority. Travel allowance of such staff shall be paid by the Service Provider in accordance with its norms. No other incentive or payment shall be made by the Service Provider to the staff.

23.7.4 The Service Provider may make available to the staff on deputation, facilities including canteen, rest rooms, personal protective equipment, uniform, conveyance, recreational facilities and housing. It is clarified that staff on deputation shall be entitled to avail leave as per the leave policy of the Authority and that the Service Provider shall not be excused from performance of its obligations under this Agreement on account of any leave obtained by the staff on deputation if such leave is as per the entitlement of such staff.

ARTICLE 24

HANDOVER OF MAINTENANCE DEPOTS

24.1 Handover of Maintenance Depots

24.1.1 The Maintenance Depots shall, in accordance with the provisions of this Agreement, be transferred to the Authority upon Termination of this Agreement. The Parties expressly agree that for and in respect of the transfers hereunder, the provisions of Article 33 shall apply *mutatis mutandis*.

24.1.2 Upon Handover of Maintenance Depots hereunder, all equipment, machinery, building, structures, and other movable assets provided by the Authority comprising the Maintenance Depots shall vest in the Authority without any Encumbrance.

24.2 Provision of Spares upon Termination

24.2.1 The Service Provider shall provide to the Authority, free of charge, an inventory of Spares along with the Maintenance Depots handed over under this Article 24. The inventory shall comprise of Spares equivalent to one-half of the average annual consumption of Spares in the Buses and at the Maintenance Depots during the preceding 10 (ten) Years. For this purpose, the Service Provider shall compute the total consumption of each Spare, during the preceding 3 (three) Years and divide the same by 3 (three) for arriving at the average annual consumption, and all fractions shall be rounded off to the nearest whole number.

24.2.2 Without prejudice to the provisions of Clause 24.2.1, the Authority may, in its discretion, require the Service Provider to provide an additional inventory of Spares, equivalent in all respects to the inventory of Spares specified in Clause 24.2.1, or such proportion thereof as the Parties may by mutual agreement determine.

24.2.3 All Spares provided by the Service Provider under this Clause 24.2 shall carry a warranty of 36 (thirty six) months from the date of its repair or replacement whichever is earlier, as the case may be, free of cost to the Authority. The terms of such warranty shall be determined in accordance with Good Industry Practice.

ARTICLE 25 INSURANCE

25.1 Insurance during Agreement Period

The Service Provider shall effect and maintain at its own cost, during the Agreement Period, such insurances for such maximum sums as may be required under this Agreement, Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Service Provider shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Service Provider during the Contract Period. The Service Provider shall procure that in each insurance policy, the Authority shall be a co-insured.

25.2 Insurance Cover

Without prejudice to the provisions contained in Clause 25.1, the Service Provider shall, during the Agreement Period, procure and maintain Comprehensive Insurance Cover including but not limited to the following:

(a) loss, damage or destruction of the Maintenance Depots, Buses and charging/swapping infrastructure;

(b) comprehensive third party liability insurance for life, goods or property, including injury to or death of personnel of the Authority or others including the conductor deployed by Authority, arising from any accident at the Maintenance Depots or otherwise, caused by a Bus on account of any negligence of the Service Provider or a defect or deficiency in a Bus;

(c) the Service Provider’s general liability arising out of the Agreement;

(d) workmen’s compensation insurance; and

(e) any other insurance that may be necessary to protect the Service Provider and its employees, including all Force Majeure Events that are insurable and not otherwise covered in items (a) to (d)above.

(f) In case of serious accident the Ex-gratia amount to the deceased/injured passengers or their dependent shall be paid by the service provider as immediate relief as per the norms of authority as and when notified. If the Service Provider fails to pay the ex-gratia amount within reasonable time, the authority shall pay the same. The amount shall be recovered from the Service Provider in immediate succeeding month of billing.

25.3 Notice to the Authority

No later than 45 (forty five) days prior to Appointed Date, the Service Provider shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and

maintain in accordance with this Article 25. Within 30 (thirty) days of receipt of such notice, the Authority may require the Service Provider to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

25.4 Evidence of Insurance Cover

All insurances obtained by the Service Provider in accordance with this Article 25 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Service Provider shall furnish to the Authority, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Service Provider to the Authority.

25.5 Remedy for failure to insure

If the Service Provider shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the Authority shall have the option to either keep in force any such insurances, and pay such premia and recover the costs thereof from the Service Provider, or in the event of computation of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Service Provider.

25.6 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Service Provider pursuant to this Article 25 shall include a waiver of any and all rights of subrogation or recovery of the insurers there under against, *inter alia*, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

25.7 Service Provider’s waiver

The Service Provider hereby further releases, assigns and waives any and all rights of subrogation or recovery against, *inter alia*, the Authority and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and underwriters, which the Service Provider may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Service Provider pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

25.8 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Service Provider, and it shall apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Buses or Maintenance Depots or life and injury or etc.

All proceeds and the appropriate usage of such insurance claims shall be notified to the Authority within 3 (three) days from the date of receipt of such claims. If any of the insurance claims not paid in time by the Service Provider to the respective use within 7 (seven) days of receipt of such claims, the Authority has the right to deduct such amounts from the payments of the Service Provider and pay the beneficiary accordingly.

25.9 Compliance with conditions of insurance policies

The Service Provider expressly acknowledges and undertakes to fully indemnify the Authority from and against all losses and claims arising from the Service Provider’s failure to comply with conditions imposed by the insurance policies effected in accordance with this Agreement.

ARTICLE 26 CCOUNTS ANDAUDIT

26.1 Audited accounts

26.1.1 The Service Provider shall maintain books of accounts recording all its receipts, income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Service Provider shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within 30 (thirty)days of the close of its accounting year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Authority shall have the right to inspect the records of the Service Provider during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.

26.1.2 The Service Provider shall, within 30 (thirty) days of the close of each quarter of its accounting year, furnish to the Authority its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.

26.1.3 On or before the expiry of 2 (two) months after its accounting year, the Service Provider shall provide to the Authority, for that accounting year, a statement duly audited by its Statutory Auditors giving summarised information on (a) the bills raised by the Service Provider for payment by the Authority, (b) the payments received and other revenues derived from the Authority, and (c) such other information as the Authority may reasonably require.

26.2 Appointment of auditors

26.2.1 The Service Provider shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors, a firm chosen by it from the mutually agreed list of 3 (three)] reputable firms of chartered accountants (the "**Panel of Chartered Accountants**"), such list to be prepared substantially in accordance with the criteria set forth in Schedule-R. All fees and expenses of the Statutory Auditors shall be borne by the Service Provider.

26.2.2 The Service Provider may terminate the appointment of its Statutory Auditors after a notice of 60 (sixty) days to the Authority, subject to the

replacement Statutory Auditors being appointed from the Panel of Chartered Accountants.

26.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at anytime, another firm (the "**Additional Auditors**") from the Panel of Chartered Accountants to audit and verify all those matters, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

26.3 Certification of claims by Statutory Auditors

Any claim or document provided by the Service Provider to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors.

26.4 Set-off

In the event any amount is due and payable by the Authority to the Service Provider, it may set-off any sums payable to it by the Service Provider and pay the balance remaining forthwith.

26.5 Dispute resolution

In the event of there being any difference between the findings of the Additional Auditors and the certification provided by the Statutory Auditors, such Auditors shall meet to resolve the differences and if they are unable to resolve the same, such Dispute shall be resolved by the Authority by recourse to the Dispute Resolution Procedure.

ARTICLE 27 ESCROW ACCOUNT

27.1 Escrow Account

27.1.1 The Authority shall prior to the Appointed Date open and establish an account ("**Escrow Account**") with a Bank ("**Escrow Bank**") in accordance with this Contract read with the Escrow Agreement.

27.1.2 For the purpose of opening and operating an Escrow Account, the Authority shall enter into an agreement with the Service Provider and the Escrow Bank ("**Escrow Agreement**") in accordance with the format provided in Schedule M to this Contract. The Escrow Agreement shall remain in full force and effect until the Escrow Account is not discharged in accordance with the terms contained thereof.

27.1.3 The Authority shall throughout the Contract Period maintain in the Escrow Account, estimated Fee payable to the Service Provider as a revolving fund and for this purpose, the Authority shall replenish with its own resources, any deficit that may arise in maintaining such balance of funds

27.2 Deposit in Escrow Account

27.2.1 The Authority shall deposit or cause to be deposited the following inflows and receipts into the Escrow Account:

(a) All the Fee due and payable to the Service Provider subject to and in accordance with Article 22;

(b) any deposit by the Authority to maintain an amount equivalent to 1 (One) month estimated Fee in the Escrow Account.

(c) all payments by the Authority including insurance claims, if any, received;

(d) Dues towards Termination Payment to the Service Provider; and

(e) any other revenues or capital receipts from or in respect of the Project

27.2.2 The Service Provider shall deposit or cause to be deposited the following in the Escrow Account:

(a) all funds constituting the Financial Package;

(b) all the revenues generated and all the income accruing from the Project including but not limited to the, advertising revenue, rentals, deposits, capital receipts or insurance claims;

(c) all payments to the Authority towards Damages.

Provided that the Senior Lenders may make direct disbursements to the Contractor in accordance with the express provisions contained in this behalf in the Financing Agreements.

27.3 Withdrawal During Agreement Period

The Service Provider shall, at the time of opening the Escrow Account, give irrevocable instructions, by way of an Escrow Agreement, to the Escrow Bank instructing, *inter alia*, that deposits in the Escrow Accounts hall be appropriated in the following order every month, or at shorter

intervals as necessary, and if not due in a month then appropriated proportionately in such month and retained in the Escrow Account and paid out there from in the month when due:

(a) all taxes due and payable by the Service Provider for and in respect of the Project;

(b) all payments relating to construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;

(c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;

(d) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;

(e) monthly proportionate provision of Debt Service due in an Accounting Year;

(f) all payments and Damages certified by the Authority as due and payable to it by the Service Provider;

(g) monthly proportionate provision of debt service due in an Accounting Year in respect of Subordinated Debt;

(h) any reserve requirements set forth in the Financing Agreements; and

(i) balance, if any, in accordance with the instructions of the Service Provider.

27.3.2 The Service Provider shall not in any manner modify the order of payment specified in Clause 27.3.1, except with the prior written approval of the Authority.

27.4 Withdrawal Upon Termination

27.4.1 Notwithstanding anything to the contrary contained in the Escrow Agreement upon Termination of this Agreement, all amounts standing to the credit of the Escrow Account shall be appropriated in the following order.

(a) all taxes due and payable by the Service Provider for and in respect of the Project;

(b) all payments and Damages certified by the Authority as due and payable to it by the Service Provider;

(c) retention and payments relating to the liability for defects and deficiencies set forth in Article37;

(d) incurred or accrued O&M Expenses;

(e) any payments due and payable to the Authority;

(f) any other payments required to be made under this Agreement; and

(g) balance, if any, in accordance with the instructions of the Service Provider:

Provided that no appropriations shall be made under Sub-clause (i) of this Clause 27.4.2 until a Vesting Certificate has been issued by the Authority under the provisions of Article 27. The provisions of this Article 27 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 27.4.1 have been discharged

ARTICLE 28
TRAFFIC REGULATION AND SECURITY

28.1 Traffic regulation by the Service Provider

28.1.1 The Service Provider shall, in consultation with the Authority, regulate the traffic on the Buses in accordance with Applicable Laws and subject to the supervision and control of the Authority or a substitute thereof empowered in this behalf under the Applicable Laws.

28.1.2 The Service Provider shall, in consultation with the Authority, evolve and publicise a system based on Good Industry Practice such that no User or category of Users is discriminated against or unduly favoured, as the case may be, in the use of the Buses.

28.1.3 The Service Provider shall have the right and obligation to manage, operate and regulate the Buses on a common carrier basis providing non-discriminatory services to all persons.

28.2 Security

28.2.1 The Service Provider acknowledges and agrees that unless otherwise specified in this Agreement it shall, at its own cost and expense, provide or cause to be provided security within the Buses for the prevention of terrorism, hijacking, sabotage and/or similar acts or occurrences; provided that the Authority and the Service Provider may at any time mutually enter into an agreement to jointly provide security services in the Buses.

28.2.2 The Service Provider shall abide by and implement any instructions of the Authority for enhancing the security within the Buses. The Service Provider shall not be entitled to any compensation for disruption of its operations or loss or damage resulting from the Authority's actions or the actions of any organisation authorised by the Authority other than those resulting from wilful or grossly negligent acts or omissions of such organisation. The Authority agrees that it shall cause the relevant organisations to take such actions as reasonably deemed necessary by them, without unduly or unreasonably disrupting the operations of the Buses or interfering with the exercise of rights or fulfillment of obligations by the Service Provider under this Agreement. The Service Provider agrees that it shall extend its full support and cooperation to the Authority and to the other organisations authorised by the Authority in the discharge of their obligations thereunder.

28.2.3 Subject to the rights of the Service Provider under this Clause 28.2.3, the Authority or any agency duly authorised by it shall be entitled to inspect and search all Buses and to search any person or vehicle entering the Site or departing there from, without unduly or unreasonably disrupting the operations of the Buses.

28.2.4 The Authority agrees that it shall, at the request of the Service Provider, procure and provide the services of security forces of the Authority on a best effort basis.

28.2.5 The Authority shall ensure and procure that the personnel of the Service

Provider and all its contractors, suppliers, sub-contractors and agents and the Users of the Buses are allowed free ingress and egress from the limits of the Buses without any unreasonable interference by the personnel of the Authority, including the security personnel employed by or on behalf of the Authority.

Part V
Force Majeure and Termination

ARTICLE 29
FORCE
MAJEURE

29.1 Force Majeure

As used in this Agreement, the expression "**Force Majeure**" or "**Force Majeure Event**" shall mean, save and except as expressly provided otherwise, occurrence in India of any or all of Non-Political Event, pandemic, Indirect Political Event and Political Event, as defined in Clauses 29.2, 29.3 and 29.4, respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the "**Affected Party**") of its obligations under this Agreement and which act or event (a) is beyond the reasonable control of the Affected Party, and (b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (c) has Material Adverse Effect on the Affected Party.

29.2 Non-Political Event

A Non-Political Event shall mean one or more of the following acts or events:

(a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Depot Sites);

(b) strikes or boycotts (other than those involving the Service Provider, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause29.3;

(c) any failure or delay of a Contractor but only to the extent caused by another Non- Political Event and which does not result in any offsetting compensation being payable to the Service Provider by or on behalf of such Contractor;

(d) any delay or failure of an overseas Contractor to deliver the Buses or equipment in India if such delay or failure is caused outside India by any event specified in Sub- clause (a) above and which does not result in any offsetting compensation being payable to the Service Provider by or on behalf of such Contractor;

(e) any judgement or order of any court of Karnataka or statutory authority made against the Service Provider in any proceedings for

reasons other than (i) failure of the Service Provider to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;

(f) the discovery of geological conditions, toxic contamination or archaeological remains on the Site or the Depot Sites that could not reasonably have been expected to be discovered through a site inspection; or

(g) any event or circumstances of a nature analogous to any of the foregoing.

(h) Any Grid failures, power cuts by the BESCOM of any nature, the clause will be considered if grid failure occurs for continuous 10 days and it will be decided in consultation with BESCOM.

29.3 Indirect Political Event

An Indirect Political Event shall mean one or more of the following acts or events:

(a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;

(b) any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the construction or operation of the Project to be financially unviable or otherwise not feasible;

(c) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty-four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;

(d) any civil commotion, boycott or political agitation which prevents production and assembly of Buses or fulfillment of Maintenance Obligations by the Service Provider for an aggregate period exceeding 15 (fifteen) days in an Accounting Year;

(e) failure of the Authority to permit the Service Provider to continue its construction works, with or without modifications, in the event of stoppage of such works after discovery of any geological or archaeological finds or for any other reason;

(f) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Service Provider by or on behalf of such Contractor;

(g) any Indirect Political Event that causes a Non-Political Event; or

(h) the imposition by any Government instrumentality, of any lock downs, curfews or mandatory quarantine rules arising out of the occurrence of any non political event or otherwise, which prevents the manufacture, procurement and delivery of the buses, of the fit out works at the maintenance depots or fulfillment of the operations and maintenance obligations of the operator for an aggregate period

exceeding 07 (seven) days in an accounting year; or

(i) any event or circumstances of a nature analogous to any of the foregoing.

29.4 Political Event

A Political Event shall mean one or more of the following acts or events by or on account of any Government Instrumentality:

(a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 36 and its effect, in financial terms, exceeds the sum specified in Clause36.1;

(b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Service Provider or of the Contractors;

(c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grantwithoutvalidcause,anyclearance,licence,permit,authorisation, noobjectioncertificate, consent, approval or exemption required by the Service Provider or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Service Provider's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;

(d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Service Provider by or on behalf of such Contractor; or

(e) any event or circumstance of a nature analogous to any of the foregoing.

29.5 Duty to report Force Majeure Event

29.5.1 Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:

(a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 29 with evidence in support thereof;

(b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;

(c) the measures which the Affected Party is taking or proposes to

take for alleviating the impact of such Force Majeure Event; and

(d) any other information relevant to the Affected Party's claim.

29.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

29.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 30.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

29.6 Effect of Force Majeure Event on the Contract

29.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 4.1 for fulfillment of Conditions Precedent and for achieving the Appointed Date shall be extended by a period equal in length to the duration of the Force Majeure Event.

29.6.2 At any time after the Appointed Date, if any Force Majeure Event occurs, the Contract Period shall be extended by a period, equal in length to the period during which the Service Provider was prevented from performing its obligations.

29.7 Allocation of costs arising out of Force Majeure

29.7.1 Upon occurrence of any Force Majeure Event prior to the Appointed Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.

29.7.2 Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Project (the "**Force Majeure Costs**") shall be allocated and paid as follows:

(a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;

(b) upon occurrence of an Indirect Political Event, all Force Majeure Costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Service Provider, and to the extent Force Majeure Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Authority to the Service Provider; and

(c) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Authority to the Service Provider.

For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses, any increase in the cost of Construction Works on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include loss of income or debt repayment obligations and for determining such costs, information contained in the Financial Package may be relied upon to the extent that such information is relevant.

29.7.3 Save and except as expressly provided in this Article 29, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

29.8 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this

Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 29, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15(fifteen) days time to make are presentation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

29.9 Termination Payment for Force Majeure Event

29.9.1 If Termination is on account of a Non-Political Event, the Authority shall make a Termination Payment to the Service Provider in an amount equal to all outstanding Payment for Services provided by Service Provider till the date of issue of Termination Notice.

29.9.2 If Termination is on account of an Indirect Political Event, the Authority shall make a Termination Payment to the Service Provider in an amount equal to all outstanding Payment for Services provided by Service Provider till the date of issue of Termination Notice.

29.9.3 If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Service Provider in an amount that would be payable under Clause 32.3 as if it were an Authority Default.

29.10 Dispute resolution

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

29.11 Excuse from performance of obligations

29.11.1 If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event; provided that:

(a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;

(b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and

(c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

29.11.2 The Parties agree that the Service Provider shall develop alternate or standby arrangements for provision of goods and services in accordance with Good Industry Practice and failure on this account shall not excuse the Service Provider from performance of its obligations hereunder.

ARTICLE 30
COMPENSATION FOR BREACH OF AGREEMENT

30.1 Compensation for default by the Service Provider

In the event of the Service Provider being in material default or breach of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material default or breach, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 30.1 for any default or breach in respect of which Damages are expressly specified and payable under this Agreement.

30.2 Compensation to be in addition

Compensation payable under this Article 30 shall be in addition to, and without prejudice to, the other rights and remedies of the Parties under this Agreement including Termination thereof.

30.3 Mitigation of costs and damage

The affected Party shall make all reasonable efforts to mitigate or limit the costs and damage arising out of or as a result of breach of Agreement by the other Party.

ARTICLE 31
SUSPENSION OF SERVICE PROVIDER'S RIGHTS

31.1 Suspension upon Service Provider Default

Upon occurrence of an Service Provider Default, the Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (a) suspend all rights of the Service Provider under this Agreement including the Service Provider's right to receive Fee, and other payments pursuant hereto, and (b) exercise such rights itself and perform the obligations hereunder or authorise any other person to exercise or perform the same on its behalf during such suspension (the "**Suspension**"). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Service Provider and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice.

31.2 Authority to act on behalf of Service Provider

31.2.1 During the period of Suspension, the Authority may, at its option and at the risk and cost of the Service Provider, remedy and rectify the cause of Suspension. The Authority shall be entitled to make deductions from the Fee for meeting the costs incurred by it for remedying and rectifying the cause of Suspension, and for defraying the expenses on operation and maintenance of Buses.

31.2.2 During the period of Suspension hereunder, all assets and liabilities in relation to the operation and maintenance of Buses, including the Maintenance Depots, shall continue to vest in the Service Provider in accordance with the provisions of this Agreement and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Service Provider under and in accordance with this Agreement, shall be deemed to have been done or taken for and on behalf of the Service Provider and the Service Provider undertakes to indemnify the Authority for all costs incurred during such period. The Service Provider hereby licenses and sub- licenses respectively, the Authority or any other person authorised by it under Clause 31.1 to use during Suspension, all Intellectual Property belonging to or licensed to the Service Provider for and in respect of operation and maintenance of Buses.

31.3 Revocation of Suspension

31.3.1 In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Service Provider under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

31.3.2 Upon the Service Provider having cured the Service Provider Default within a period not exceeding 90 (ninety) days from the date of Suspension, the Authority shall revoke the Suspension forthwith and restore all rights of the Service Provider under this Agreement. For the avoidance of doubt, the Authority shall provide access to the Maintenance Depots and Buses, as the case may be, to enable the Service Provider to cure the Service Provider Default hereunder.

31.4 Termination

31.4.1 At any time during the period of Suspension under this Article 31, the Service Provider may by notice require the Authority to revoke the Suspension and issue a Termination Notice. The Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 32 as if it is an Service Provider Default under Clause32.1.

31.4.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder, the Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of an Service Provider Default.

ARTICLE-32
TERMINATI
ON

32.1 Termination for Service Provider Default

32.1.1 Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Service Provider fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 120 (one hundred and twenty)] days, the Service Provider shall be deemed to be in default of this Agreement (the "**Service Provider Default**"), unless the default has occurred as a result of any breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall mean and include the following:

(a) The Performance Security has been encashed and appropriated in accordance with Clause 9.2, and the Service Provider fails to replenish or provide fresh Performance Security, within a Cure Period of 30 (thirty)days;

(b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Service Provider fails to cure, within a Cure Period of 120 (one hundred and twenty) days, the Service Provider Default for which whole or part of the Performance Security was appropriated;

(c) the Service Provider fails to supply the Prototypes within the period specified in Clause13.6;

(d) the Service Provider is in material breach of the Operation Obligations, Maintenance Obligations or the Safety Requirements, as the case maybe;

(e) the Service Provider has failed to make any payment to the Authority within the period specified in this Agreement;

(f) a material breach of any of the Project Agreements by the Service Provider has caused a Material Adverse Effect;

(g) the Service Provider creates any Encumbrance in breach of this Agreement;

(h) the Service Provider repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;

(i) a change in ownership has occurred in breach of the provisions of clause 5.3,

(j) there is a Handover, pursuant to law either of (i) the rights and/or obligations of the Service Provider under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Service Provider, and such transfer causes a Material Adverse Effect;

(k) an execution levied on any of the assets of the Service Provider has caused a Material Adverse Effect;

(l) the Service Provider is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Service Provider or for the whole or material part of its assets that has a material bearing on the Project;

(m) the Service Provider has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;

(n) a resolution for winding up of the Service Provider is passed, or any petition/ application for winding up of the Service Provider or a corporate insolvency resolution process is admitted by a tribunal or court of competent jurisdiction and a provisional liquidator, receiver or an interim resolution professional is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Service Provider is ordered to be liquidated or wound up by a tribunal or court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Service Provider are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Service Provider under this Agreement and the Project Agreements; and provided that:

(i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;

(ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Service Provider as at the Appointed Date; and

(iii) each of the Project Agreements remains in full force and effect.

(o) any representation or warranty of the Service Provider herein contained which is, as of the date hereof, found to be materially false or the Service Provider is at any time hereafter found to be in breach thereof;

(p) the Service Provider submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority’s rights, obligations or interests and which is false in material particulars;

(q) the Service Provider has failed to fulfill any obligation, for which failure Termination has been specified in this Agreement;

(r) the Service Provider issues a Termination Notice in violation of the provisions of this Agreement; or

(s) the Service Provider commits a default in complying with any other provision of this Agreement if such default causes a Material Adverse Effect on the Authority and the Service Provider fails to cure such default in a Cure Period of 90 (ninety)days.

32.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of an Service Provider Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Service Provider; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Service Provider of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Service Provider to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice subject to the provisions of Clause31.4.

32.1.3 The Authority shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 31.4 to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Service Provider in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement:

Provided that the Lenders' Representative may, instead of exercising the Senior Lenders' right of substitution, procure that the default specified in the notice is cured within the aforesaid period of 180 (one hundred and eighty) days, and upon such curing thereof, the Authority shall withdraw its notice referred to above and restore all the rights of the Service Provider:

Provided further that upon written request from the Lenders' Representative, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by such further period not exceeding 90 (ninety) days, as the Authority may deem appropriate.

32.2 Termination for Authority Default

32.2.1 In the event that any of the defaults specified below shall have occurred, and the Authority fails to cure such default within a Cure Period of 90 days or such longer period as has been expressly provided in this Agreement, the Authority shall be deemed to be in default of this Agreement (the "**Authority Default**") unless the default has occurred as a result of any breach of this Agreement by the Service Provider or due to Force Majeure. The defaults referred to herein shall mean and include the following:

(a) the Authority commits a material default in complying with any of

the provisions of this Agreement and such default has a Material Adverse Effect on the Service Provider;

(b) the Authority has failed to make any payment to the Service Provider within the period specified in this Agreement; or

(c) the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

32.2.2 Without prejudice to any other right or remedy which the Service Provider may have under this Agreement, upon occurrence of a Authority Default, the Service Provider shall be entitled to terminate this Agreement by issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the Service Provider shall by a notice inform the Authority of its intention to issue the Termination Notice and grant 15 (fifteen) days to the Authority to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

32.3 Termination Payment

32.3.1 The payment pursuant to termination of this Agreement shall become due and payable to the Successful Bidder by authority within ninety (90) days of a demand being made by the Successful Bidder with the necessary particulars as required by authority.

32.3.2 **In case of Service Provider Default**

Upon Termination on account of successful bidder Default during the Contract Period, the Authority shall pay to the successful bidder by way of Termination Payment, an amount equal to:

90% (ninety per cent) of the Debt Due less Insurance Cover;

Provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due.

For the avoidance of doubt, the operator hereby acknowledges that no Termination Payment shall be due or payable on account of the operator Default occurring prior to COD.

32.3.3 **In case of authority Default**

Upon Termination on account of BMTC Default, the BMTC shall pay to the successful bidder, by way of Termination Payment, an amount equal to:

(a) Debt Due

(b) 115% (one hundred and fifteen per cent) of the Adjusted Equity; and

Termination Payment shall become due and payable to the Service provider within [90 (Ninety)] days of a demand being made by the Service Provider to the

Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at a rate equal to [1% (One per cent)] above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed [120 (One Twenty)] days; provided further that liability of the Authority to make the Termination Payment hereof is subject to the fulfilment of the Divestment Requirements in accordance with the provisions of Article 33 of this Agreement. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.

Upon Termination on expiry of the Agreement Period by efflux of time, no Termination Payment shall be due and payable to the Service Provider; provided that in the event any assets and equipment at the Maintenance Depots, essential for the efficient, economic and safe operation of the Buses, shall have been acquired and installed after the [7th] anniversary of the Appointed Date, with prior written consent of the Authority, which consent shall not be unreasonably denied, a Termination Payment equal to [80% (eighty percent)] of the Adjusted Depreciated Value of such assets and equipment shall be deemed to be Debt Due for the purposes of Termination Payment.

The Service Provider expressly agrees that Termination Payment under this Article 32 shall constitute a full and final settlement of all claims of the Service Provider on account of Termination of this Agreement for any reason whatsoever and that the Service Provider or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

32.4 Other rights and obligations of the Authority

Upon Termination for any reason whatsoever, the Authority shall:

(a) take possession and control of the Buses and Maintenance Depots forthwith;

(b) take possession and control of all materials, stores, implements, plants and equipment on or about the Maintenance Depots;

(c) be entitled to restrain the Service Provider and any person claiming through or under the Service Provider from entering upon the Maintenance Depots or any part of the Authority premises till such loss is made good;

(d) require the Service Provider to comply with the Divestment Requirements set forth in Clause 33.1;and

(e) succeed upon election by the Authority, without the necessity of any further action by the Service Provider, to the interests of the Service Provider under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the

Authority elects to succeed to the interests of the Service Provider. For the avoidance of doubt, the Service Provider acknowledges and agrees that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Service Provider and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

32.5 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 32.3.6, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

ARTICLE 33
DIVESTMENT OF RIGHTS AND INTEREST

33.1 Divestment requirements upon expiry of the Agreement Period

33.1.1 Upon expiry of the Contract Period, the Service Provider shall comply with and conform to the following divestment requirements (the "**Divestment Requirements**"), no later than 15 (fifteen) days from the date of expiry of the Agreement Period:

(a) deliver forthwith the actual or constructive possession of the Maintenance Depots along with the infrastructure therein, free and clear of all Encumbrances;

(b) cure all Buses of all defects and deficiencies so that the Buses are compliant with the Maintenance Obligations; provided that if such defects and deficiencies have arisen on account of accident, vandalism, arson, riot or natural calamity occurring no earlier than 120 (one hundred and twenty) days prior to such Termination or expiry of the Agreement Period, the Authority shall grant to the Service Provider such additional time, not exceeding 240 (two hundred forty) days, as may be reasonably required for repair and rectification thereof;

(c) cure all the equipment at the Maintenance Depots of any defect or deficiency such that it can continue to be used efficiently and economically in accordance with Good Industry Practice;

(d) deliver and transfer relevant records, reports and Intellectual Property pertaining to the Buses and Maintenance Depots including all software and manuals pertaining thereto, and complete 'as built' Drawings as on the Handover Date so as to enable the Authority to operate and maintain the Buses and Maintenance Depots, and execute such deeds of conveyance, documents and other writings as the Authority may reasonably require in connection therewith. For the avoidance of doubt, the Service Provider represents and warrants that the Intellectual Property shall be adequate and complete for the operation and maintenance of the Bus and shall be assigned or licensed to the Authority free of any Encumbrance;

(e) transfer and/or deliver all Applicable Permits in respect of the Maintenance Depots and Depot Sites, and Buses to the extent permissible under Applicable Laws;

(f) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Service Provider in respect of the outstanding insurance claims to the

extent due and payable to the Authority;

(g) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Service Provider in the Maintenance Depots and Buses; and

(h) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Service Provider in the Maintenance Depots and Insurance Cover, free from all Encumbrances, absolutely unto the Authority or to its nominee.

33.1.2 Subject to the exercise by the Authority of its rights under this Agreement or any of the Project Agreements to perform or procure the performance by a third party of any of the obligations of the Service Provider, the Parties shall continue to perform their obligations under this Agreement notwithstanding the giving of any Termination Notice until the Termination of this Agreement becomes effective in accordance with its terms.

33.2 Inspection and cure

Not earlier than 90 (ninety) days prior to expiry but not later than 15 (fifteen) days prior to the effective date of such expiry, the Authority shall verify, after giving due notice to the Service Provider specifying the time, date and place of such verification and/or inspection, compliance by the Service Provider with the Maintenance Obligations, and if required, cause appropriate tests to be carried out at the Service Provider's cost for this purpose. The Service Provider shall at its own cost and expense, cure defaults if any, in the Maintenance Obligations and the provisions of Article 32 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 33.

33.3 Cooperation and assistance on handover of Maintenance Depots

33.3.1 The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth handover of the assets specified in Clause 33.1.1 in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the users, other members of the public or the lawful occupiers of any part of the Depot Sites.

33.3.2 The Parties shall provide to each other, 9 (nine) months prior to the Handover Date in the event of Termination by efflux of time and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the

proposed arrangements for operation of the Project following the Handover Date. The Service Provider shall further provide such reasonable advice and assistance as the Authority, its nominee or agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Handover Date.

33.3.3 The Authority shall have the option to purchase or hire from the Service Provider at a fair market value and free from any Encumbrance all or any part of the plant and machinery used in connection with the Project but which does not form part of the assets specified in Clause33.1.1 and is reasonably required in connection with operation of the Maintenance Depots. For the avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure shall apply.

33.4 Certificate

The divestment of all rights, title and interest in the assets specified in Clause 33.1.1 shall be deemed to be complete on the date on which all of the Divestment Requirements have been fulfilled, and the Authority shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Schedule-P (the "**Vesting Certificate**"), which will have the effect of constituting evidence of divestment by the Service Provider of all of its rights, title and interest in such assets, and their vesting in the Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Authority or its nominee on, or in respect of, the Buses and Maintenance Depots on the footing that all Divestment Requirements have been complied with by the Service Provider.

33.5 Divestment costs etc.

33.5.1 Upon expiry of the Contract Period, the Parties shall bear and pay equally, all costs incidental to divestment of all of the rights, title and interest of the Service Provider in the Buses and Maintenance Depots in favour of the Authority.

33.5.2 In the event of Termination attributable to the Service Provider, it shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Service Provider in the Buses and Maintenance Depots in favour of the Authority upon such Termination.

33.5.3 In the event of Termination attributable to the Authority, it shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Service Provider in the Buses and Maintenance Depots in favour of the Authority upon such Termination.

33.5.4 In the event of any dispute relating to matters covered by and under this

Article 33, the Dispute Resolution Procedure shall apply.

ARTICLE 34
DEFECTS LIABILITY AFTER TERMINATION

34.1 Liability for defects after Termination

The Service Provider shall be responsible for all defects and deficiencies in the Buses and Maintenance Depot for a period of 180 (one hundred and eighty) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Authority in the Buses during the aforesaid period. In the event that the Service Provider fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified at the Service Provider's risk and cost so as to make the Buses conform to the Maintenance Obligations. All costs incurred by the Authority hereunder shall be reimbursed by the Service Provider to the Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the ESCROW account.

34.2 Retention in ESCROW Account .

34.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 34.2.3, a sum equal to 10% (ten per cent) of the total Fee in respect of the Accounting Year immediately preceding the Handover Date shall be retained by the Authority for a period of 150 (one hundred and fifty) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Clause 34.1.

34.2.2 Without prejudice to the provisions of Clause 34.2.1, the Authority shall carry out an inspection of the Buses and Maintenance Depots at any time between 180 (one hundred and eighty) and 15 (fifteen) days prior to the Termination and if it determines that the status of the Buses is such that a sum larger than the amount stipulated in Clause 34.2.1 should be retained by the Authority and for a period longer than the aforesaid 180 (one hundred and eighty) days, the amount so determined, subject to a ceiling equivalent to twice the amount specified in Clause 34.2.1 shall be retained by the Authority for a period not exceeding 240 (two hundred and forty)days.

34.2.3 The Service Provider may, for the performance of its obligations under this Article 34, provide to the Authority a guarantee from a Bank for a sum equivalent to the amount determined under Clause 34.2.1 or 34.2.2, as the case may be, and for the period specified therein, substantially in the form set forth in Schedule-D (the "**Performance Security**"), to be modified, *mutatis mutandis*, for this purpose, and the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be

entitled to encash and appropriate the required amounts from the Performance Guarantee for undertaking the repairs or rectification at the Service Provider’s risk and cost in accordance with the provisions of this Article 34. Upon furnishing of a Performance Guarantee under this Clause34.2.3, the retention of funds interms of Clause34.2.1 or 34.2.2, as the case may be, shall be dispensed with.

Part VI
Other Provisions

ARTICLE 35
ASSIGNMENT AND CHARGES

35.1 Restrictions on assignment and charges

35.1.1 Subject to Clause 35.2, this Agreement shall not be assigned by the Service Provider to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

35.1.2 Subject to the provisions of Clause 35.2, the Service Provider shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Service Provider is a party except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

35.2 Permitted assignment and charges

The restraints set forth in Clause 35.1 shall not apply to:

(a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Service Provider;

(b) mortgages/pledges/hypothecation of goods/assets, and their related documents of title, arising or created in the ordinary course of business of the Service Provider, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Project;

(c) assignment of rights, interest and obligations of the Service Provider to or in favour of the Lenders' Representative as nominee and for the benefit the Senior Lenders, to the extent covered by an in accordance with the Substitution Agreement as security for financing provided by the Senior Lenders under the Financing Agreements; and

(d) liens or encumbrances required by any Applicable Law.

(e) Subcontracting of specific tasks.

35.3 Substitution Agreement

35.3.1 The Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Service Provider pursuant to the agreement for substitution of the Service Provider (the "**Substitution Agreement**") to be entered into amongst the Service Provider, the Authority and the Lenders' Representative, on behalf of Senior Lenders, substantially in the form set forth in Schedule-S.

35.3.2 Upon substitution of the Service Provider under and in accordance with the Substitution Agreement, the Nominated Company substituting the Service Provider shall be deemed to be the Service Provider under this Agreement and shall enjoy all rights and be responsible for all obligations

of the Service Provider under this Agreement as if it were the Service Provider; provided that where the Service Provider is in breach of this Agreement on the date of such substitution, the Authority shall by notice grant a Cure Period of 120 (one hundred and twenty) days to the Service Provider for curing such breach.

35.4 Assignment by the Government

Notwithstanding anything to the contrary contained in this Agreement, the Authority may, after giving 60 (sixty) days' notice to the Service Provider, assign and/ or transfer any of its rights and benefits and/or obligations under this Agreement to an assignee who is, in the reasonable opinion of the Authority, capable of fulfilling all of the Authority's then outstanding obligations under this Agreement.

ARTICLE 36
CHANGE IN LAW

36.1 Increase in costs

If as a result of Change in Law, the Service Provider suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds Rs. 2 crore (Rupees two crore) in any Accounting Year, the Service Provider may so notify the Authority and propose amendments to this Agreement so as to place the Service Provider in the same financial position as it would have enjoyed had there been no such Change in Law resulting in increased cost, reduction in return or other financial burden as aforesaid. Upon notice by the Service Provider, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Service Provider may by notice require the Authority to pay an amount that would place the Service Provider in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Authority shall pay the amount specified therein; provided that if the Authority shall dispute such claim of the Service Provider, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 36.1 shall be restricted to changes in law directly affecting the Service Provider's costs of performing its obligations under this Agreement.

36.2 Reduction in costs

If as a result of Change in Law, the Service Provider benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds Rs. 2 crore (Rupees two crore) in any Accounting Year, the Authority may so notify the Service Provider and propose amendments to this Agreement so as to place the Service Provider in the same financial position as it would have enjoyed had there been no such Change in Law resulting in decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Authority, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the

aforesaid notice, the Authority may by notice require the Service Provider to pay an amount that would place the Service Provider in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Service Provider shall pay the amount specified therein to the Authority; provided that if the Service Provider shall dispute such claim of the Authority, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 36.2 shall be restricted to changes in law directly affecting the Service Provider’s costs of performing its obligations under this Agreement.

36.3 Protection of NPV

Pursuant to the provisions of Clauses 38.1 and 38.2 and for the purposes of placing the Service Provider in the same financial position as it would have enjoyed had there been no Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall endeavor to establish a net present value (the "**NPV**") of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred. For the avoidance of doubt, the Parties expressly agree that for determination of NPV, the discount rate to be used shall be equal to the weighted average rate of interest at which the Service Provider has raised its debt under its Financing Agreements.

36.4 Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 36 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than 1 (one) year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than 2 (two) years from the close of such Accounting Year.

ARTICLE 37
LIABILITY AND INDEMNITY

37.1 General indemnity

37.1.1 The Service Provider shall indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Authority Instrumentalities and Authority owned and/or controlled entities/enterprises, (the "**Authority Indemnified Persons**") against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Service Provider of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of goods and services by the Service Provider to the Authority or to any person or from any negligence of the Service Provider under contract or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Authority Indemnified Persons.

37.1.2 The Authority shall indemnify, defend, save and hold harmless the Service Provider against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of (a) defect in title and/or the rights of the Authority in the land comprised in the Site and Depot Sites, and/or (b) breach by the Authority of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Service Provider of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the Service Provider, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Service Provider.

37.2 Indemnity by the Service Provider

37.2.1 Without limiting the generality of Clause 37.1, the Service Provider shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

(a) failure of the Service Provider to comply with Applicable Laws and Applicable Permits;

(b) payment of taxes required to be made by the Service Provider in respect of the income or other taxes of the Service Provider's

contractors, suppliers and representatives; or

(c) non-payment of amounts due as a result of materials or services furnished to the Service Provider or any of its contractors which are payable by the Service Provider or any of its contractors.

Without limiting the generality of the provisions of this Article 37, the Service Provider shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Service Provider or by the Service Provider's Contractors in performing the Service Provider's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Service Provider shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Maintenance Depots or Buses, as the case may be, or any part thereof or comprised therein, are held to constitute an infringement and their use is permanently enjoined, the Service Provider shall promptly make every reasonable effort to secure for the Authority a licence, at no cost to the Authority, authorising continued use of the infringing work. If the Service Provider is unable to secure such licence within a reasonable time, the Service Provider shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that they become non-infringing.

37.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 37 (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

37.4 Defence of claims

37.4.1 The Indemnified Party shall have the right, but not the obligation, to

contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 37, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

37.4.2 If the Indemnifying Party has exercised its rights under Clause 37.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the

prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

37.4.3 If the Indemnifying Party exercises its rights under Clause 37.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

(a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party;

(b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action;

(c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or

(d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:

(i) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or

(ii) that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (b), (c) or (d) of this Clause 37.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

37.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 37, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

37.6 Limitation of Liability

37.6.1 Notwithstanding anything to the contrary in this Agreement, the liability of one Party towards the other Party for any damages or compensation of any nature whatsoever under this Agreement, save and except Termination Payment, shall not exceed Rs. 250 crore (Rupees Two hundred fifty crore). For the avoidance of doubt, the limitation hereunder shall not apply to any or all liabilities in respect of third parties.

37.6.2 Except as otherwise provided in this Agreement, neither Party shall be liable to the other Party for any loss of profit or for any other indirect or consequential damages or losses that may be suffered in connection with this Agreement.

37.7 Survival on Termination

The provisions of this Article 37 shall survive Termination.

ARTICLE 38
RIGHTS AND TITLE OVER SITES

38.1 Service Provider's rights

For the purpose of this Agreement, the Service Provider shall have rights to the use of the Depot Sites as sole licensee, subject to and in accordance with this Agreement, and to this end, it may regulate the entry and use of the Depot Sites by third parties in accordance with and subject to the provisions of this Agreement.

38.2 Access rights of the Authority and others

38.2.1 The Service Provider shall allow free access to the Depot Sites at all times for the authorised representatives of the Authority and for the persons duly authorised by any Government Instrumentality to inspect the Maintenance Depots, and to investigate any matter within their authority, and upon reasonable notice, the Service Provider shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

38.2.2 The Service Provider shall, for the purpose of operation and maintenance of any utility allow free access to the Depot Sites, as the case may be, at all times for the authorised persons and vehicles of the controlling body of such utility.

38.3 Property taxes

38.3.1 All property taxes on the Depot Sites shall be payable by the Authority as owner of the Depot Sites; provided, however, that any such taxes payable by the Service Provider under Applicable Laws for use of the Depot Sites shall not be reimbursed or payable by the Authority. For the avoidance of doubt, the Parties agree that stamp duties, if any, due and payable on the grant of licence comprising this Agreement shall be paid by the Authority. Provided, however, that the Authority may require the Service Provider to pay such stamp duties, which shall be reimbursed by the Authority to the Service Provider within 15 (fifteen) days of receiving the demand therefor.

38.4 Restriction on sub-letting

The Service Provider shall not sublicense or sublet the whole or any part of Depot Sites, save and except as may be expressly set forth in this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Service Provider to appoint Contractors for the performance of its obligations hereunder including for operation and maintenance of all or any part of the Depot Sites.

ARTICLE 39
DISPUTE RESOLUTION

39.1 Dispute resolution

39.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "**Dispute**") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 39.2.

39.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

39.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon a mutually accepted person to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by such person or without the intervention of such person, either Party may require such Dispute to be referred to the Managing Director of Bengaluru Metropolitan Transport Corporation (BMTC) and the Chairman of the Board of Directors of the Service Provider for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 39.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause39.3.

39.3 Dispute resolution:

39.3.1 If any dispute arises in the matter concerning with the tender or agreement terms the decision of the Managing Director, BMTC shall be final and binding.

39.3.2 In case any litigation in the matter concerning with the tender or agreement terms the same shall lie within the jurisdiction of civil courts only at Bengaluru City.

39.4 Adjudication by a tribunal

In the event of constitution of a statutory tribunal or other forum with powers to adjudicate upon disputes between the Service Provider and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 39.3, be adjudicated upon by such tribunal or other forum in accordance with Applicable Laws and all references to Dispute Resolution Procedure shall be construed accordingly.

ARTICLE 40 DISCLOSURE

40.1 Disclosure of Specified Documents

The Service Provider shall make available for inspection by any person, copies of this Agreement, the Maintenance Manual, the Safety Requirements and the Manual of Specifications and Standards (hereinafter collectively referred to as the "**Specified Documents**"), free of charge, during normal business hours on all working days at the Service Provider's Registered Office. The Service Provider shall prominently display at the Maintenance Depots, public notices stating the availability of the Specified Documents for such inspection, and shall make copies of the same available to any person upon payment of copying charges on a 'no profit no loss' basis.

40.2 Disclosure of Documents relating to safety

The Service Provider shall make available for inspection by any person copies of all Documents and data relating to safety of the Buses, free of charge, during normal business hours on all working days, at the Service Provider's Registered Office. The Service Provider shall make copies of the same available to any person upon payment of copying charges on a 'no profit no loss' basis.

40.3 Withholding disclosure of Protected Documents

Notwithstanding the provisions of Clauses 42.1 and 42.2, the Authority shall be entitled to direct the Service Provider, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Clauses.

Explanation:

The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Clauses 42.1 and 42.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.

ARTICLE 41
REDRESSAL OF COMPLAINTS

41.1 Complaint Register

41.1.1 The Service Provider shall keep one register (the "**Complaint Register**") in every Bus for recording of complaints by passengers and another for recording of complaints by drivers and maintenance staff.

41.1.2 The Complaint Register shall be securely bound and each page thereof shall be duly numbered. It shall have appropriate columns including the complaint number, date, substance of the complaint and the action taken by the Service Provider.

41.1.3 Without prejudice to the provisions of Clauses 41.1.1 and 41.1.2, the Authority may, in consultation with the Service Provider, specify the procedure for making complaints in electronic form and for responses thereto.

41.2 Redressal of complaints

41.2.1 The Service Provider shall inspect the Complaint Register of every Bus before undertaking any Maintenance, as the case may be, and take prompt and reasonable action for redressal of each complaint. The action taken shall be briefly recorded by the Service Provider in the Complaint Register.

41.2.2 In the event that a complaint shall require an urgent response from the Service Provider, the Driver of Buses or any maintenance staff of the Authority, as the case may be, shall inform the Maintenance Depot or the Operational Control Centre forthwith and upon receiving such complaint, the Service Provider shall dispatch its Prompt Response Team and take such other action as may be necessary.

41.2.3 No later than 7 (seven) days after each Scheduled Maintenance, the Service Provider shall send to the Authority a true photocopy each or a soft copy thereof, as the case may be, of all the pages of the Complaint Register on which any entry and the action taken for redressal of each complaint has been recorded during the course of the preceding quarter, and upon perusal thereof, the Authority may, in its discretion, advise the Service Provider to take such further action as the Authority may deem appropriate. The Service Provider shall consider such advice and inform the Authority of the remedial action taken by the Service Provider.

ARTICLE 42
MISCELLANEO
US

42.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts of Karnataka shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

42.2 Waiver of immunity

Each Party unconditionally and irrevocably:

(a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;

(b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;

(c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and

(d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection herewith).

42.3 Depreciation

For the purposes of depreciation under Applicable Laws, the property representing the capital investment made by the Service Provider in the Maintenance Depots shall be deemed to be acquired and owned by the Service Provider. For the avoidance of doubt, the Authority shall not in any manner be liable in respect of any claims for depreciation to be made by the Service Provider under Applicable Laws.

42.4 Waiver

42.4.1 Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:

(a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations

under this Agreement;

(b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and

(c) shall not affect the validity or enforceability of this Agreement in any manner.

42.4.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation there under nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

42.5 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

(a) no review, comment or approval by the Authority of any Project Agreement, Document or Drawing submitted by the Service Provider nor any observation or inspection of the construction, operation or maintenance of the Project and Buses nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Service Provider from its obligations, duties and liabilities under this Agreement, Applicable Laws and Applicable Permits; and

(b) the Authority shall not be liable to the Service Provider by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a)above.

42.6 Exclusion of implied warranties etc.

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by either Party not contained in a binding legal agreement executed by both Parties.

42.7 Survival

42.7.1 Terminations hall:

(a) not relieve the Service Provider or the Authority, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof; and

(b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

42.8.2 All rights and obligations surviving Termination shall only survive for a period of 3 (three) years following the date of such Termination; provided, however, that all obligations of the Service Provider in relation

to licensing, sub-licensing, assignment or transfer of the specified Intellectual Property to the Authority shall survive the Termination in perpetuity.

42.8 Entire Agreement

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any obligations of the Service Provider arising from the Request for Qualification or Request for Proposals, as the case may be, shall be deemed to form part of this Agreement and treated as such.

42.9 Severability

If for any reason whatsoever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of Karnataka or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.

42.10 No partnership

This Agreement shall not be interpreted or construed to create an association or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

42.11 Third parties

This Agreement is intended solely for the benefit of the Parties, and their respective successors and permitted assigns, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.

42.12 Successors and assigns

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns.

42.13 Notices

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

(a) in the case of the Service Provider, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Service Provider may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside Delhi may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e- mail to the number as the Service Provider may from time to time designate by notice to the Authority;

{Attention:
Designation:
Address:
Fax No:
Email:}

(b) in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand at the address given below and addressed to the person named below with a copy delivered to the Authority Representative or such other person as the Authority may from time to time designate by notice to the Service Provider; provided that if the Service Provider does not have an office in Delhi it may send such notice by facsimile or e- mail and by registered acknowledgement due, air mail or by courier;

{Name:
Designation:
Address:
Fax No:
Email:}; and

(c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been

delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

42.14 Language

All notices required to be given by one Party to the other Party and all other communications, Documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

42.15 Counterparts

This Agreement may be executed in two counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement.

ARTICLE 43 DEFINITIONS

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

"**Accounting Year**" means the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year;

"**Additional Auditors**" shall have the meaning ascribed to it in Clause 26.2.3;

"**Adjusted Depreciated Value**" means the amount arrived at after adjusting the depreciated book value of an asset (as stated in the books of account of the Service Provider) to reflect the variation occurring in WPI between the date of procurement thereof and the Hand over Date;

"**Adjusted Equity**" means the Equity funded in Indian Rupees and adjusted on the first day of the current month (the "**Reference Date**"), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in WPI, and for any Reference Date occurring:

(a) on or before COD, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and the Reference Date;

(b) from COD and until the 4th (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the "**Base Adjusted Equity**") and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD to the extent of variation in WPI occurring between COD and the Reference Date; and

(c) after the 4th (fourth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.56% (zero point five six per cent)[3] thereof at the commencement of each month following the 4th (fourth) anniversary of COD and the amount so arrived at shall be revised to the extent of variation in WPI occurring between COD and the Reference Date;

For the avoidance of doubt, the Adjusted Equity shall, in the event of Termination, be computed as on the Reference Date immediately preceding the Handover Date; provided that no reduction in the Adjusted Equity shall be made for a period equal to the duration, if any, for which the Contract Period is extended, but the revision on account of WPI shall continue to be made;

"**Affected Party**" shall have the meaning as set forth in Clause 29.1;

"**Agreement**" or "**Supply-cum-Operation and Maintenance Agreement**" means this Agreement, its Recitals, the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

"**Annual Assured Bus Kilometers**" shall have the meaning ascribed to it in Clause 22.4.2;

---

[3] This number shall be substituted in each case by the figure arrived at upon dividing 100 by the number of months comprising the Contract Period. For example, the figure for a 15 year Contract Period shall be 100/180= 0.555 rounded off to two decimal points i.e. 0.56.

"**Annual Assured Payment Amount**" shall have the meaning ascribed to it in Clause 23.4.3; "**Annual Safety Report**" shall have the meaning ascribed to it in Clause 18.5.1;

"**Applicable Laws**" means all laws, brought into force and effect by GOI or the State Government including rules, regulations and notifications made thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;

"**Applicable Permits**" means all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction, operation and maintenance of the Buses and Maintenance Depots, as the case may be, during the subsistence of this Agreement;

"**Appointed Date**" means the date on which Financial Close is achieved and all the Condition Precedents are satisfied or waived, as the case may be, in accordance with the provisions of this Agreement, and such date shall be the date of commencement of the Contract Period;

"**Authority Default**" shall have the meaning set forth in Clause 32.2.1;

"**Authority Nominated Personnel**" means any person authorized by the Authority to collect User Fare from passengers for using the Bus Service;

"**Authority Representative**" means such person or persons as may be authorised in writing by the Authority to act on its behalf under this Agreement and shall include any person or persons having authority to exercise any rights or perform and fulfill any obligations of the Authority under this Agreement;

"**Available Hours**" shall have the meaning set forth in Clause 20.2.1;

"**Bank**" means a nationalised bank or a scheduled bank incorporated in India and having a minimum net worth of Rs. 1,000 crore (Rupees one thousand crore). For the avoidance of doubt, scheduled bank shall mean a bank as defined under section 2(e) of the Reserve Bank of India Act, 1934;

"**Bank Rate**" means the rate of interest specified by the Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect;

"**Base Index Date**" means the last date of the month which shall have closed no later than 30 (thirty) days prior to the Proposal Due Date;

"**Bi-monthly Schedule**" shall have the meaning as set forth in Clause 17.5;

"**Proposal**" means the documents in their entirety comprised in the proposal submitted by the Successful Bidder in response to the Request for Proposals in accordance with the provisions thereof and "**Proposals**" shall mean the proposals submitted by any and all qualified bidders;

"**Proposal Due Date**" means the last date on which the Bid may have been submitted in accordance with the provisions of the Request for Proposals;

"**Bid Security**" means the security provided by the Service Provider to the Authority along with the Proposal in accordance with the Request for Proposals, and which is to remain in force until substituted by the Performance Security;

"**Breakdown**" means the mechanical failure of a bus that prevents the bus from being operation or impedes the operation so much that it is impossible or dangerous to operate;

"**Biennial Schedule**" shall have the meaning as set forth in Clause 17.8;

"**Bus**" means bus complying with Standards and Specifications as detailed in Schedule B, procured by the Service Provider as per the Procurement Schedule, for the purposes of Project;

"**Bus Kilometre**" means kilometres travelled by each Bus, as per this Agreement or as directed/approved by the Authority;

"**Bus Stop**" means designated stops as per Operational Plan, along the routes from where passengers board and alight the Bus;

"**CPIIW**" means the Consumer Price Index for Industrial Workers published by Labour Bureau, Government of India and shall include any index which substitutes the CPIIW, and any reference to CPIIW shall, unless the context otherwise requires, be construed as a reference to the CPIIW published for the period ending with the preceding month;

"**Calculation Date**" means the date (7) days prior to the Proposal Due Date under the RFP Document;

"**Change in Law**" means the occurrence of any of the following after the Proposal Due Date:

(a) the enactment of any new Indian law;

(b) the repeal, modification or re-enactment of any existing Indian law;

(c) the commencement of any Indian law, which has not entered into effect until the Proposal Due Date;

(d) a change in the interpretation or application of any Indian law, by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the Proposal Due Date; or

(e) any change in the rates of any of the Taxes that have a direct effect on the Agreement;

"**Change of Scope**" shall have the meaning as set forth in

Clause 15.1; "**Change of Scope Order**" shall have the

meaning set forth in Clause 15.2;

"**Charging Infrastructure**" means the infrastructure including the equipment installed by the Service Provider for the sole purpose of charging Buses at the Maintenance Depots;

"**Control Centre**" shall have the meaning as set forth in

Clause 16.4.6; "**Conditions Precedent**" shall have the

meaning as set forth in Clause 4.1.1;

"**Consumables**" shall have the meaning as set forth in Clause 17.3.1;

"**Construction Period**" means the period beginning from the Appointed Date and ending on COD;

"**Construction Works**" means all works and things necessary to complete the Maintenance Depots in accordance with this Agreement;

"**Contract**" shall have the meaning as set forth in Clause 3.1.1

"**Contractor**" means the person or persons, as the case may be, with whom the Service Provider has entered into any of the construction contracts, the O&M Contract any other material contract for construction, operation and/or maintenance of the Maintenance Depots or the Buses, as the case may be, or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Service Provider;

"**Cure Period**" means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible

for such breach or default and shall:

(a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;

(b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and

(c) not in any way be extended by any period of Suspension under this Agreement;

provided that if the cure of any breach by the Service Provider requires any reasonable action by the Service Provider that must be approved by the Authority hereunder, the applicable Cure Period shall be extended by the period taken by the Authority to accord its approval;

"**Damages**" shall have the meaning as set forth in Sub-clause (y) of Clause 1.2.1;

"**Debt Due**" means the aggregate of the following sums expressed in Indian Rupees outstanding on the Handover Date:

(a) the principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (the "principal") but excluding any part of the principal that had fallen due for repayment two years prior to the Handover Date;

(b) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Sub-clause (a) above until the Handover Date but excluding (i) any interest, fees or charges that had fallen due one year prior to the Handover Date, (ii) any penal interest or charges payable under the Financing Agreements to any Senior Lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Authority Default; and

(c) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost;

provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior Lenders and/or the Service Provider, it shall for the purposes of this Agreement be deemed to be Debt Due even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

"**Debt Service**" means the sum of all payments on account of principal, interest, financing fees and charges due and payable in an Accounting Year to the Senior Lenders under the Financing Agreements;

"**Depot**" shall have the meaning as set forth in Article 10;

"**Designs**" or "**Drawings**" means all of the drawings, designs, calculations and documents pertaining to the Buses as set forth in Schedule-F;

"**Dispute**" shall have the meaning as set forth in Clause 39.1.1;

"**Dispute Resolution Procedure**" means the procedure for resolution of Disputes as set forth in Article 39;

"**Divestment Requirements**" means the obligations of the Service Provider for and in respect of Termination as set forth in Clause 33.1.1;

"**Document**" or "**Documentation**" means documentation in printed or written form, or in tapes, discs, drawings, computer programmes, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form;

"**Due Date**" shall have the meaning as set forth in Clause 17.4.3;

"**Emergency**" means a condition or situation that is likely to endanger the security of the individuals on or about the Maintenance Depots or Buses, as the case may be, or which poses an immediate threat of material damage to any of the Project Assets;

"**Encumbrances**" means, in relation to the Depot Sites Maintenance Depots or Buses and as the case may be, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Maintenance Depots, or Buses, as the case may be, where applicable herein;

"**Equity**" means the sum expressed in Indian Rupees representing the paid up equity share capital of the Service Provider for meeting the equity component of the Total Project Cost, and for the purposes of this Agreement shall include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Service Provider, and any interest-free funds advanced by any shareholder of the Service Provider for meeting such equity component.
"**Escrow Account**" means an Account which the Service Provider shall open and maintain with a Bank in which all inflows and outflows of cash on account of capital and revenue receipts and expenditures shall be credited and debited, as the case may be, in accordance with the provisions of this Agreement, and includes the Sub-Accounts of such Escrow Account;

"**Escrow Agreement**" shall have the meaning set forth in Clause 27.1.2; "**Escrow Bank**" shall have the meaning set forth in Clause 27.1.1; "**Escrow**

Default" shall have the meaning set forth in Schedule-M;

"**Failure**" shall have the meaning set forth in Clause

17.12.2;

"**Fee**" shall have the meaning set forth in Clause 22.1;

"**Fee Revision**" shall have the meaning set forth in Clause 22.7.1;

"**Fee Revision Date**" means the date of Fee Revision in accordance with Clause 22.7;

"**Financial Close**" means the fulfillment of all conditions precedent to the initial availability of funds under the Financing Agreements;

"**Financial Model**" means the financial model adopted by Senior Lenders, setting forth the capital and operating costs of the Project and revenues there from on the basis of which financial viability of the Project has been determined by the Senior Lenders, and includes a description of the assumptions and parameters used for making calculations and projections therein;

"**Financial Package**" means the financing package indicating the total capital cost of the Project and the means of financing thereof, as set forth in the Financial Model and approved by the Senior Lenders, and includes Equity, all financial assistance specified in the Financing Agreements, Subordinated Debt, if any;

"**Financing Agreements**" means the agreements executed by the Service Provider in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non- convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Total Project Cost, and includes amendments or modifications made in accordance with Clause5.2.3;

"**Force Majeure**" or "**Force Majeure Event**" shall have the meaning

ascribed to it in Clause 29.1;

"**Forty Five Day Schedule**" shall have the meaning as set forth in Clause 17.6;

"**GCC**" shall have the meaning as set forth in Recital (G);

"**GOI**" means the Government of India;

"**Good Industry Practice**" means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are

generally and reasonably expected from a reasonably skilled and experienced Service Provider engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Service Provider in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

"**Government Instrumentality**" means any department, division or sub-division of the Government of India and/or the State Government and includes any commission, board, authority, agency or municipal and other local authority or statutory body, including Panchayat, under the control of the Government of India or the State Government, as the case may be, and having jurisdiction over all or any part of the Buses or Maintenance Depots as the case may be, or the performance of all or any of the services or obligations of the Service Provider under or pursuant to this Agreement;

"**Guaranteed Availability**" shall have the meaning as set forth in Clause 20.2.5;

"**Half-Yearly Schedule**" shall have the meaning as set forth in Clause 17.7;
"**Handover**" shall mean the Authority hereby grants to the Service Provider access to the Right of Way and Depot for undertaking Services in accordance with provisions of this Agreement.

"**Indemnified Party**" means the Party entitled to the benefit of an indemnity

pursuant to Article 37; "**Indemnifying Party**" means the Party obligated to

indemnify the other Party pursuant to Article 37; "**Indirect Political Event**"

shall have the meaning as set forth in Clause 29.3;

"**Insurance Cover**" means the aggregate of the maximum sums insured under the insurances taken out by the Service Provider pursuant to Article 25, and includes all insurances required to be taken out by the Service Provider under Clause 25.2 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

"**Intellectual Property**" means all patents, trade marks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programmes and manuals, drawings, copyright (including rights in computer software), database rights, semi-conductor, topography rights, geographical indicators, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;

"**Invoice Amount**" shall have the meaning as set forth in Clause 22.3.1;

"**Key Performance Indicators**" shall have the meaning as set

forth in Clause 20.1; "**LOA**" or "**Letter of Award**" means the

letter of award referred to in Recital (D);

"**Lenders' Representative**" means the person duly authorised by the Senior Lenders to act for and on behalf of the Senior Lenders with regard to matters arising out of or in relation to this Agreement, and includes his successors, assigns and substitutes;

"**Licensed Premises**" shall have the meaning set forth in Clause 10.2.2;

"**Maintenance Depots**" shall have the meaning as set forth in Clause 17.25;

"**Maintenance Depot Commissioning Date**" means the date on which the Commissioning Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Article 14;

"**Maintenance Depot Development Schedule**" means the Project Milestones set forth in Schedule-E for completion of the Maintenance Depots on or before the Scheduled Maintenance Depot Completion Date;

"**Maintenance Inspection Report**" shall have the meaning as set forth in

Clause 19.3;

"**Maintenance Manual**" shall have the meaning ascribed to it in Clause 17.2;

"**Maintenance Obligations**" shall have the meaning as set forth in Clause

17.1.1;

"**Maintenance Requirements**" shall have the meaning as set forth in Clause

17.4;

"**Material Adverse Effect**" means a material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party;

"**Mis-Declaration**" shall have the meaning as set forth in Clause 21.3.3;

"**Non-Available Hours**" shall have the meaning as set forth in Clause 21.2.2;

"**Non-Political Event**" shall have the meaning as set forth in Clause 29.2;

"**O&M**" means operation and maintenance of the Buses and includes all matters connected with or incidental to such maintenance, and provision of services and facilities in accordance with the provisions of this Agreement;

"**O&M Contract**" means the maintenance contract that may be entered into between the Service Provider and the O&M Contractor for performance of all or any of the O&M obligations;

"**O&M Contractor**" means the person, if any, with whom the Service Provider has entered into an O&M Contract for discharging O&M obligations for and on behalf of the Service Provider;

"**O&M Expenses**" means expenses incurred by or on behalf of the Service Provider or by the Authority, as the case may be, for all O&M including (a) cost of salaries and other compensation to employees, (b) cost of materials, supplies, utilities and other services, (c) premia for insurance, (d) all taxes, duties, cess and fees due and payable for O&M, (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs, (f) payments required to be made under any other contract in connection with or incidental to O&M, and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement;

"**Operation Manual**" shall have the meaning as set forth in Clause 17.21.2;

"**Operational Route**" shall have the meaning as set forth in Clause 17.14;

"**Service Provider Default**" shall have the meaning as set forth in

Clause 32.1.1;

"**Panel of Chartered Accountants**" shall have the meaning set forth in Clause 26.2;

"**Parties**" means the parties to this Agreement collectively and "**Party**" shall mean any of the parties to this Agreement individually;

"**Performance Security**" shall have the meaning as set forth in Clause 9.1.1;

"**Periodic Overhaul Schedule**" shall have the meaning as set forth in Clause 17.9;

"**PK Fee**" shall have the meaning as set forth in Clause 22.1.5

"**PKM**" or "**Passenger Kilometres"** means the cumulative distance travelled by Users on the Buses in a day;

"**Political Event**" shall have the meaning as set forth in Clause 29.3;

"**Project**" means the supply, operation and maintenance of Buses and the construction, operation and maintenance of the Maintenance Depots in

accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Agreement;

"**Project Assets**" means all physical and other assets relating to and forming part of the Depot Sites and Maintenance Depots, including:

(a) rights over the Depot Sites in the form of licence, Right of Way or otherwise;

(b) tangible assets such as civil works and equipment including foundations, embankments, electrical systems, communication systems and administrative offices;

(c) all rights of the Service Provider under the Project Agreements;

(d) financial assets, such as receivables, security deposits etc.;

(e) insurance proceeds; and

(f) Applicable Permits and authorisations relating to or in

respect of the Project; "**Project Milestones**" means the project

milestones set forth in Schedule-E;

"**Prompt Response Teams**" or "**PR Teams**" shall have the meaning as set

forth in Clause 17.14.1; "**Prototypes**" shall have the meaning as set forth in

Clause 13.4.1;

"**Punch List**" shall have the meaning set forth in Clause 14.1.4;

"**Re**.", "**Rs**." or "**Rupees**" or "**Indian Rupees**" means the lawful currency of

the Republic of India;

"**Reliability**" shall have the meaning as set forth in Clause 20.4.1;

"**Reliability Measurement Unit**" shall have the meaning as set forth in Clause 20.4.2;

"**Reference Exchange Rate**" means, in respect of any one currency that is to be converted into another currency in accordance with the provisions of this Agreement, the exchange rate as of 12.00 (twelve) noon on the relevant date quoted in Delhi by the State Bank of India, and in the absence of such rate, the average of similar rates quoted in Delhi by the Bank of India and the Bank of Baroda;

"**Reference Index Date**" for and in respect of a Year, means the last date of the month which shall have closed no later than 30 (thirty) days prior to commencement of Accounting Year;

"**Request for Proposals**" or "**RFP**" shall have the meaning as set

forth in Recital (B);

"**Right of Way**" means the constructive possession of the Depot Sites, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for construction, operation and maintenance of the Maintenance Depots, in accordance with this Agreement;

"**Safety**" shall have the meaning as set forth in Clause 20.6.1

"**Safety Measurement Unit**" shall have the meaning as set

forth in Clause 20.6.2 "**Safety Requirements**" shall have the

meaning as set forth in Clause 18.1;

"**Scheduled Maintenance**" shall have the meaning as set forth in Clause 17.4.1;

"**Scheduled Maintenance Depot Development Date**" shall have the meaning set forth in Clause 12.5.1;

"**Scope of the Project**" shall have the meaning as set

forth in Clause 2.1; "**Successful Bidder**" shall have the

meaning as set forth in Recital (D);

"**Senior Lenders**" means the financial institutions, banks, multilateral lending agencies, trusts, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Service Provider under any of the Financing Agreements for meeting all or any part of the Total Project Cost and who hold *pari passu* charge on the assets, rights, title and interests of the Service Provider;

"**Site**" shall have the meaning set forth in Clause 10.1; "**Spares**" shall have the meaning as set forth in Clause 17.3.2;

"**Specifications and Standards**" means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Buses and Maintenance Depots, as set forth in Schedule-B, and any modifications thereof, or additions thereto, as included in the design and engineering for the Buses submitted by the Service Provider to, and expressly approved by, the Authority;

"**State**" means the States of India, including a Union Territory, where the Buses are operated and the Maintenance Depots are located and "**State**

Government" means the governments of those States;

"**Statutory Auditors**" means a reputable firm of chartered accountants acting as the statutory auditors of the Service Provider under the provisions of the Companies Act, 2013 including any re-enactment or amendment thereof, for the time being in force;

"**Subordinated Debt**" means the aggregate of the following sums expressed in Indian Rupees or in the currency of debt, as the case may be, outstanding as on the Handover Date:

(a) the principal amount of debt provided by lenders or the Service Provider's shareholders for meeting the Total Project Cost and subordinated to the financial assistance provided by the Senior Lenders; and

(b) all accrued interest on the debt referred to in Sub-clause (a) above but restricted to the lesser of actual interest rate and a rate equal to 5% (five per cent) above the Bank Rate in case of loans expressed in Indian Rupees and lesser of the actual interest rate and six-month LIBOR (London Inter Bank Offer Rate) plus 2% (two per cent) in case of loans expressed in foreign currency, but does not include any interest that had fallen due one year prior to the Handover Date;

provided that if all or any part of the Subordinated Debt is convertible into Equity at the option of the lenders and/or the Service Provider's shareholders, it shall for the purposes of this Agreement be deemed to be Subordinated Debt even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

"**Suspension**" shall have the meaning as set forth in Clause 31.1;

"**Subsidy Performance Security**" shall have the meaning as set forth in Clause 9.1.2;

"**Taxes**" means any Indian taxes including the goods and services tax, excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Project, which are charged, levied or imposed by any Authority Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

"**Termination**" means the expiry or termination of this Agreement;

"**Termination Notice**" means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

"**Termination Payment**" means the amount payable by the Authority under and in accordance with the provisions of this Agreement, upon Termination and

includes Additional Termination Payment. For the avoidance of doubt, it is expressly agreed that the amount payable shall be subject to the limitations specified in Clause 32.3;

"**Tests**" means the tests as set forth in Schedule-H to determine the conformity of Buses with the provisions of this Agreement;

"**Total Project Cost**" means the capital cost incurred on construction and financing of the Project, excluding Real Estate Development, and shall be limited to the lowest of:

(a) the capital cost of the Project, as set forth in the Financial Package;

(b) the actual capital cost of the Project upon completion; and

(c) a sum of Rs. ***** crore (Rupees *****crore);

provided that in the event of Termination, the Total Project Cost shall be deemed to be modified to the extent of variation in WPI or Reference Exchange Rate occurring in respect of Adjusted Equity and Debt Due, as the case may be, in accordance with the provisions of this Agreement; provided further that in the event WPI increases, on an average, by more than 6% (six per cent) per annum for the period between the date hereof and COD, the Parties shall meet, as soon as reasonably practicable, and agree upon revision of the amount hereinbefore specified such that the effect of increase in WPI, in excess of such 6% (six per cent), is reflected in the Total Project Cost. For the avoidance of doubt, it is agreed that Total Project Cost shall not include the cost of specified assets.

"**Training Obligations**" shall have the meaning as set forth in Clause 23.1;

"**Transfer Date**" means the date of completion of the Services under this Agreement or termination of the Agreement by a Termination Notice;

"**Unscheduled Maintenance**" shall have the meaning as set forth in Clause 17.4.1;

"**User**" means a person who uses or intends to use the Buses on payment of User Fare or in accordance with the provisions of this Agreement and Applicable Laws;

"**User Fare**" means the fare payable by users for

traveling on the Bus; "**Vesting Certificate**" shall have

the meaning as set forth in Clause 33.4.

"**WPI**" means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI,

and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month.

SCHEDULES

SCHEDULE-A

(See Clause 10.1)

SITE OF THE MAINTENANCE DEPOT

1 The Depot Site

1.1 Depot Site shall include the land described in Annex-I of this Schedule-A.

1.2 An inventory of the Site including the land, buildings, structures, road works, trees and any other immovable property on, or attached to the Site shall be prepared jointly by the Authority Representative and the Service Provider, and such inventory shall form part of the memorandum referred to in Clause 10.3.1 of the Agreement.

Annex - I

Site of the Depot [●]

SCHEDULE -B

(See Clause 12.5.1)

SPECIFICATIONS AND STANDARDS

1. The Service Provider shall comply with the Bus Specifications (including specifications for ITS) set forth in Annex - I of this Schedule - B for procurement of Buses.

2. Latest bus specifications, currently Urban Bus Specifications - II issued by Ministry of Urban Development, GOI in April 2013, the AIS 052 – Bus Body Code issued by the Automotive Research Association of India (“ARAI”) in 2015, and the Central Motor Vehicles Rules, 1989, should be followed unless changes are specified in Annex - I to this schedule by the Authority.

Annex – I

1. Subject to the provisions of this Schedule, procurement of Bus shall conform to Applicable Laws and the latest bus specifications published by Ministry of Urban Development, GOI and Department of Heavy Industries, GOI. An authenticated copy of the latest bus specifications has been provided to the Service Provider as part of the RFP Document.

2. Deviations from the aforesaid bus specifications shall be listed out here. Such deviations shall be specified only if they are considered essential in view of project-specific requirements.

SCHEDULE-C

(See Clause 4.1.3)

APPLICABLE PERMITS

I. The following permits shall be obtained by the Operator:

1. [For Buses

(a) Commercial Vehicle Permit
(b) Certificate of Registration of Buses
(c) Certificate of Fitness
(d) Pollution under Control Certification
(e) Bus Insurance
(f) Customs Clearance Certificate (if needed)

2. For Depot

(a) Permits for Building Plan in accordance with the applicable State Act and by-laws
(b) Fire safety clearance from Fire Department
(c) Insurance for Depot, Electrical & Civil Infrastructure and other Authority owned assets related to Agreement
(d) Customs Clearance Certificate for any testing or maintenance equipment (if needed)
(e) Permission of State Government for extraction of boulders from quarry
(f) Permission of Pollution Control Board for installation of crushers
(g) Permission of State Government for drawing water from nearby river/reservoir (if needed)
(h) Clearance of Pollution Control Board for installation of diesel generator sets
(i) Permission of State Government for cutting of trees
(j) License for use of explosives (if needed)
(k) License from Inspector of factories or other competent authority for setting up of Batch Plant (if needed)
(l) Clearance of Pollution Control Board for Asphalt Plant (if needed)
(m) Any other permits or clearances required under Applicable Laws]

II. The following permits shall be procured by the Authority:

[1. No Objection Certificate from State Transport Department or RTA or from State Transport Undertaking as applicable
2. Stage Carriage Permit
3. Conductor's License
4. Bus Permits
5. Fare Notification
6. Passenger Tax
7. Applicable Environment Clearance from State Government]

SCHEDULE-D
(See Clause9.1)

PERFORMANCE SECURITY

Managing Director,
Department of Transport,
Government of Karnataka,
Bangalore

WHEREAS:

A. **The Governor of [•]**, acting through{.....},[•], and having its head office at _____ (hereinafter referred to as the "**Authority**" or, which expression shall, unless excluded by and/or repugnant to the context, mean and include its successors, legal representatives and permitted assigns) of the one part;

AND

{****** Limited}, having its registered office at {*insert*} represented through its ****** (hereinafter referred to as the "**Service Provider**", which expression shall, unless it be repugnant or contrary to the subject or context thereof, be deemed to mean and include its legal representatives, successors and permitted assigns) of the other part.

The Authority and the Service Provider are hereinafter collectively referred to as the "**Parties**" and individually as a "**Party**".

B. The Agreement requires the Service Provider to furnish a Performance Security to the Authority in a sum of Rs .....(Rupees in words only) (the "Guarantee Amount") as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the term of the Agreement Period (as defined in the Agreement).

C. We, ...through our Branch at.....(the "Bank") have agreed to furnish this Bank Guarantee by way of Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Service Provider's obligations during the Agreement Period, under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Service Provider, such sum or sums up to an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.

2. AletterfromtheAuthority,underthehandofanOfficernotbelowtherankofthe ……***(name of the officer),*** that the Service Provider has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Service Provider is in default in due and faithful performance of its obligations during the Agreement Period under the Agreement and its decision that the Service Provider is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Service Provider, or any dispute between them pending before any court, tribunal, or any other authority or body, or by the discharge of the Service Provider for any reason whatsoever.

3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Service Provider and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.

4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Service Provider before presenting to the Bank its demand under this Guarantee.

5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfillment and/ or performance of all or any of the obligations of the Service Provider contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Service Provider, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Service Provider or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.

6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Service Provider for the fulfillment, compliance and/or performance of all or any of the obligations of the Service Provider under the Agreement.

7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force until a period of [●] days beyond the Agreement Period and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, no later than [●] months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.

8. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.

9. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment there offorth with, and if sent by postit shall be

deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.

10. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of [●] year and [●] months or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

Signed and sealed this.....day of....., 20 at

SIGNED, SEALED AND DELIVERED
For and on behalf of the BANK by:

(Signature)

(Name)

(Designation

) (Code

Number)

(Address)

NOTES:

i. The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.

ii. The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

SCHEDULE -E

(See Clause 12.5)

COMPLETION SCHEDULE

SCHEDULE-F

(See Clause 13.4)

DESIGN AND DRAWINGS

1 Designs and Drawings

1.1 In compliance of the obligations set forth in Clause 13.1 of this Agreement, the Service Provider shall furnish to the Authority, free of cost, all Designs and Drawings listed in Annex-I of this Schedule-F; provided that the Designs and Drawings relevant for design review by the Government as specified in Clause 13.4.2, shall be submitted prior to such review.

1.2 For the purposes hereof, Design shall mean and include plans and drawings of the Buses or sub-system or equipment thereof. Provided that the Service Provider may share only details regarding the layout of the bus and not any other propriety information.

1.3 All designs shall include maintenance and service manual of the respective sub-systems.

1.4 All designs and drawings shall be supplied in hard copy, in duplicate, and in electronic form. All drawings shall be provided in auto-cad format.

1.5 All designs and drawings shall conform to and refer to the relevant provisions in the Specifications and Standards.

Annex – I
List of Designs and Drawings
[●]

SCHEDULE-G

(See Clause 13.3)

PROCUREMENT SCHEDULE

Sr. No.	Number of Buses	Activity	Timeline
1	-	Release of Order	M
2	01	Prototype delivery of bus	M + 60 days
3	119	Delivery of 100% of tendered vehicles	M + 180 days

SCHEDULE-H

(See Clause 13.5)

TESTS

1 Tests

1.1 Save and except as otherwise provided in this Agreement, the Service Provider shall conduct, or cause to be conducted, each of the Tests specified in this Schedule-H.

1.2 The Authority shall conduct, or cause to be conducted, adequate trial runs of Prototypes to determine their compliance with Specifications and Standards, requirements and Safety Requirements.

1.3 Tests to be conducted on the Prototype or its sub-systems, as the case may be, (the "**Type Tests**") have been specified in Annex-I of this Schedule-H and routine tests to be carried out on all Buses (the "**Routine Tests**")have been specified in Annex-II of this Schedule-H.

1.4 The Service Provider shall provide the results of all Tests to the Authority for review and comments, if any.

2 Schedule for Tests

2.1 The Service Provider shall, not later than [●] weeks prior to the likely date of conducting a Type Test, notify the Authority of its intent to conduct the Test and furnish particulars of the equipment and methodology forming part of the Test.

2.2 The Service Provider shall notify the Authority of its intent to conduct the Type Test, referred to in paragraph 2.1 above, at any time after [●] days from the date of such notice. The notice shall specify the place, date and time of such Test. Upon receipt of such notice, the Authority may, within [●] days of such notice, designate its representative to witness the Test. The Service Provider shall, whether or not an Authority Representative is designated, conduct the Test in accordance with Article 13 and this Schedule-H.

2.3 The Authority may at any time designate its representative to witness any Routine Test on a Bus and the Service Provider shall, upon receipt of a notice to this effect, undertake such Routine Test on a mutually agreed date, and in the presence of the Authority Representative.

3 Agency for conducting Tests

Save and except as otherwise specified, all Tests set forth in this Schedule-H shall be conducted by the Service Provider or such other agency or person as it may specify in consultation with the Authority.

4 Tests for Safety certification

Tests for determining the conformity of a Bus with the Safety Requirements shall be conducted in accordance with Good Industry Practice and in conformity with Applicable Laws.

5 Acceptance certificate

Upon successful completion of Tests, the Authority shall issue an Acceptance Certificate for the Prototype in accordance with the provisions of Article 13
.

Annex -
I Type
Tests
[●]

In addition to the standard Type Tests of ARAI, the following tests shall be conducted for the buses:

S. No.	Applicable Tests	Standard / Regulation
1	Grade ability	AIS 003 & AIS 049
2	Pass by noise	IS 3028 & AIS 049
3	Coast Down Test	IS 14785 & AIS 049
4	Brake, Base line (Part – 3)	IS 11852 & AIS 049
5	Brake static (Part - 4)	IS 11852 & AIS 049
6	Construction and Functional safety requirements	AIS 038
7	Electrical energy consumption	AIS 039
8	Range Test	AIS 040
9	Net Power and Max 30 min power test	AIS 041
10	Safety requirements of Traction batteries	AIS 038
11	EMC	AIS 004 (Part 3) & AIS 049

Annex - II

Routine Tests [●]

[Routine Tests under this Agreement shall include the list of routine tests determined by Government Instrumentality including ARAI from time to time.]

SCHEDULE-I

(See Clause 16.1.1)

OPERATION AND MAINTENANCE REQUIREMENTS

NOTE: The maintenance schedule is to be as per OEMs Maintenance schedule

Bus repair and maintenance generally calls for following activities amongst others at varying intervals
/ Periodicity / Km operated by each bus, requirements varying with bus make, model, etc.:

~~(a)~~ Daily washing and cleaning of buses

~~(b) Periodic inspections and rectifications as required.~~

~~(c) Service provider shall provide the battery capacity and rating for charging at the inception of the contract.~~

~~(d) Battery to be replaced if the battery capacity drops below 80% of the initially stated capacity at any time of the contract~~

~~(e) Preventive Maintenance as prescribed by Bus Manufacturer in form of maintenance schedules at certain time intervals / Km plied such maintenance generally varies withperiod~~
~~/ Km plied by various sub-systems of a Bus. As an example periodicity of some such maintenance schedules and main activities therein are illustrated as under:~~

~~(i) Daily maintenance – fuel, oils / lubricants, coolant, air pressure, air inflation, loose fasteners, fitments etc. – check, top up, tighten, as required.~~

~~(ii) Monthly / bi monthly – [•] /[•] Km operation -All activities of earlier schedules and engine oil / engine filter change, checking for exhaust emission, tyre condition necessary for corrective / preventive actions, engine tuning, etc.~~

~~(iii) Quarterly – [•] Km operation – All activities of earlier schedules and brake system maintenance including but not limited to inspection, servicing, brake lining change / replacement, servicing of other brake system items, greasing etc.; vehicle electrical, lighting, alignment, etc.~~

~~(iv) Six monthly – [•] Km – All activities of above schedules, and activities related to steering, axles, transmission, tyres, drive line, etc.~~

~~(v) Yearly – [•] Km – All above activities and full checking / inspection of bus chassis, bus bodies and their fitments, and taking necessary~~

~~corrective / preventive actions.~~

(vi) ~~Bi-annual / annual Certification of road worthiness of buses - Initial periodicity being after two years for up to certain age then annually.~~

(vii) ~~Replacement of in-use bus aggregates at about Mean Time Between Failures (MTBF) to prevent failures and consequent costs and inconvenience.~~

~~(f) Running repairs upon Driver complaints/ report etc.~~

~~(g) Break down repairs on site of Bus failures~~

~~(h) Towing of failed Bus to a depot workshop and repairing the bus failures~~

~~(i) Accidental vehicles' towing and or repairs~~

~~(j) Preparation of buses for periodic roadworthiness certification which includes all types of denting / painting of bus bodies / bus body items and operational functionality of chassis~~
~~items and the bus as a whole.~~

~~(k) Bus body and related items repairs / replacements etc. on the basis of periodic inspections / crew reports / general presentation aspects / operational problems reported by commuters / any other stake holders, etc.~~

~~(l) Major repairs /calibrations of bus aggregates such as engines, gear box, rear axle etc.~~

~~(m) Replacement of failed aggregates with new / serviceable ones.~~

~~(n) Removal, dismantling, repairing, assembling and re-fitment of tyres and rims to buses.~~

~~(o) Repair, replacement of electrical, electronic, ITS, lighting, etc. items, sub-systems etc.~~

~~(p) Removal, replacement of items failing due to operational wear and tear, such as brake and clutch lining, etc.~~

~~(q) Repair / replacement of seats, upholstery; cleaning, dusting and washing upholstery.~~

~~(r) Denting / painting of buses as per requirement.~~

~~(s) Reconditioning of Bus aggregates such as engines, transmission, axles, steering system, electrical, etc.~~

~~(t) Retrieval of spare parts during / for above processes,~~

(u) Repair and re-treading of tyres / repair of tubes,

(v) Major accidental repair of buses including chassis, bus body and related items

(w) Acquisition, storage, inventory management, distribution, scrapping and disposal of spares / items / materials / vehicles etc.

(x) Any other activity related to operation and maintenance of buses.

(y) Infrastructure and other requirements for repair and maintenance functions of Bus

(i) Bus depot duly equipped with requisite plant and equipment, machinery, tools, jigs and fixtures, etc.

(ii) Other facilities asunder:

(A) Washing facilities complete with washing machine, water storage and treatment facilities, etc.

(B) Charging infrastructure,

(C) Service pits / ramps etc.
(D) Painting facilities,
(E) Welding - electric arc and oxy acetylene gas based.

(F) Tyre repair facilities

(G) Air compressor and air inflation facilities,

(H) Utilities, administrative, accounts, stores, and other related facilities

(I) Breakdown van / recovery / towing vehicle etc.

(J) Electricity infrastructure

(iii) Control Centre facilities duly equipped with microprocessors, communications and other related facilities,

(iv) Trained staff for various trades and shifts of work

(v) Documents, schedules, manuals etc. for maintenance activities; specifications of spares, etc.

SCHEDULE-J

(See Clause 16.5)

OPERATIONAL PLAN

The OPERATIONAL Plan should include list of Routes, frequencies, headway, number of Buses to be deployed on each Route, and any other information the Authority intends to include.[4]

Route Number	From	Via	To	Span of Operations	Number of Buses	Headway

Assured Fleet Availability of Buses

The following number of Buses shall operate on each respective route:

	Number of Buses Peak Requirement				Daily Scheduled Bus Kilometres		Number of Days/Nights		Total Scheduled Bus Kilometres	
	Morning	Midday	Evening	Night	Days	Nights	Days	Nights	Days	Nights
Mondays to Fridays										
Saturdays										
Sundays										
Public Holidays										
Total										
Total Scheduled Bus Kilometres										

Note 1: The number of Users in the Bus should not exceed 4 (four) persons during non-peak hours and 6 (six) persons during peak hours per square metre of the floor space available for use by passengers inside a Bus to ensure that the Service Provider can meet its KPIs accordingly.

SCHEDULE-K

(See Clause 18.1)

SAFETY REQUIREMENTS

1. General Safety Requirements

1.1 The Service Provider shall be responsible for all safety matters related to the performance of the Project and shall manage on behalf of the Authority all safety requirements related to the Bus Service in accordance with all Applicable Laws.

1.2 The Service Provider shall bear full responsibility for the safety of the Bus Services throughout the Contract Period in accordance with the Contract.

1.3 Without prejudice to the Service Provider's obligation to ensure the safety of the Bus Service, the Service Provider shall:

(a) comply with Applicable Laws;

(b) provide all appropriate measures in the providing Bus Service and maintenance of the Project Facilities to ensure, so far as reasonably practicable, the safety of all passengers, contractors, staff and the general public;

(c) consult with Authority and adopt the requirements of the emergency services;

(d) take particular care to ensure safety for all passengers at accesses and exits, while waiting, boarding or alighting and when moving along the Buses; and

(e) have due regard for the safety of third parties, in particular pedestrians and other road users, in the operation and maintenance of Project Facilities.

2. Safety Planning

2.1 The Service Provider shall participate in any safety and emergency planning forum together with relevant third parties, which shall include, as a minimum, the Authority and the emergency services. This forum will consider and agree the safety matters and safety risks presented by the Project, consult relevant internal and external stakeholders and examine these risks in a thorough manner and plan the appropriate contingencies.

3. Safety Management

3.1 The Service Provider shall develop safety procedures for the Project and shall implement the safety procedures throughout the Contract Period.

4. Applicable Laws

4.1 The Service Provider shall, after prior consultation with the Authority, implement all alterations to the Bus Service which are required by any Applicable Laws which comes into force after the Effective Date relating to safety.

4.2 The Service Provider shall comply and shall procure that Sub-Contractors shall comply with the requirements of all relevant Government Authorities with the prior approval from authority.

5. Response to Emergencies

5.1 The Service Provider shall react safely and quickly to emergencies in all aspects of the Project.

5.2 The Service Provider shall co-operate with relevant Fire Services, Police, and any other Government Instrumentalities wherever necessary.

5.3 The Service Provider shall develop an Emergency Management Plan that sets out its predetermined actions to providing a response to a major crisis or emergency occurring at Maintenance Depots, and en-Route Buses (“Emergency Management Plan”).

5.4 In developing the Emergency Management Plan, the Service Provider shall consult with all relevant Government Instrumentalities, emergency services and local authorities.

5.5 All personnel designated to carry out specific responsibilities under the Emergency Management Plan are expected to know and understand the policies and procedures outlined in the Plan. The response to any major crisis or disturbance shall always be conducted within the framework of the Plan.

5.6 The Service Provider shall ensure that all staff are given clear instructions in line with the Emergency Management Plan, including training to deliver public address announcements in a way that avoids causing alarm and that instills confidence in passengers that the matter is under control.

6. Reporting of Incidents

6.1 The Service Provider shall comply with all Applicable Laws relating to the reporting of accidents, incidents, fatalities, injuries, and dangerous occurrences. The Service Provider shall liaise with the Authority in relation to the reporting of any incident and the future measures to be taken to prevent the recurrence thereof.

SCHEDULE-L

(See Clause 17.1)

MAINTENANCE DEPOTS EQUIPMENT
(This is in addition to the specific equipments required for electric buses)

Sr. No.	Equipment
A	
1.	Fully automatic three brushes bus washing machine with simultaneous chassis and wheel washing arrangement and complete with waste water treatment and recycling system.
2.	Effluent Treatment Plant (ETP)
3.	Heavy duty vacuum cleaner
4.	Fire safety equipment set
5.	Air compressor
6.	Paint booth complete with environment control, paint drying system, etc.
B	
7.	Lathe machine complete with general tools, jigs and fixtures
8.	Radial drilling machine
9.	Brake drum turning / re-boring machine
10.	Hydraulic press
11.	Brake efficiency assessment system
12.	Wheel alignment
13.	Head light beam aligner
C	
14.	Grease pump (Air operated)
15.	Hand held grease pump
16.	Pneumatic combined waste oil extractor and dispenser
D	
17.	Engine diagnostic system - complete with, sensors, microprocessor and diagnostics software
E	
18.	Pedestal mounted and portable digital, with auto cut-off, tire inflation system
19.	Nitrogen tire inflation
20.	Tire - wheel rim dismantling and assembling system / tyre changer

21.	Wheel balancing equipment

Sr. No.	Equipment
F	
22.	Simulators for Driver training
23.	Capacity building /training facilities and equipment
G	
24.	Auto electrical test bench
25.	AC gas charger with AC gas cylinders
26.	Battery charger auto cut-off system
27.	Battery tester
28.	Multi-function tester
H	
29.	Hydraulic jack
30.	Hydraulic pallet trolley
31.	Hydraulic engine lifting crane
32.	Battery operated forklift truck
33.	Break down relief van
I	
34.	Power cutter
35.	Pneumatic impact tools kit
36.	Portable electric welding machine
37.	Portable gas welding machine
38.	Full set of hand tools, including torque wrench, measuring instruments, gauges
39.	Riveting tools, hand drills, riveting guns / equipment
40.	Sheet metal / tubing / structural items cutting, forming facilities / equipment; plywood and upholstery cutting and fabrication facilities
J	
41.	Work benches, bench vices. Hand drills, jigs and fixtures, clamping devices,
42.	Commercial washing machine
43.	Washing pumps with guns
44.	Complete set of workmen cup boards, rest room facilities
45.	Office furniture, cup boards, all other office requirements
46.	All utilities- phones, fax, mobile phones, printers, etc. for workshop and other offices

Sr. No.	Equipment
47.	Vehicles for officers, checking, attending to alerts /emergencies
48.	Safety and security equipment / facilities
49.	Water cooler with water filter / purifier
50.	Tree plantation / landscaping
51.	Room air conditioners, desert coolers, heaters, fans in offices and workshop areas
52.	Depot yard lighting - high mast type, search lights, etc.
K	
53.	Storage facilities for: • new materials, spares, aggregates, tyres, oils and lubricants • repairable as above • scrapped and disposable items as above
54.	Vehicles for transportation of materials, stores and spares
55.	Desk tops and laptops, printers, related hard ware and software; cash counting, safe cash storage and handling equipment
L	
56.	Basic Control Centre equipment including those related to IT, ITS, communication, display, etc. - hardware and software
57.	Navigation based operational schedule monitoring system
M	**Other ITS**
58.	Electronic type passenger Information display boards at Bus Stops etc.
59.	Other equipment, facility, tools etc. if any required for O&M of Buses and for other facilities under its control

NOTE: The depot will be handed over in as is where is condition and any additional maintenance equipment to be maintained as per OEM maintenance practice.

SCHEDULE-M

(See Clause 27.1)

ESCROW AGREEMENT

THIS ESCROW AGREEMENT is entered into on this the ..... day of ..... 20....

ESCROW AGREEMENT

THIS ESCROW AGREEMENT is entered into on this the ..... day of ..... 20.....

AMONGST

1. Limited, accompany incorporated under the provisions of the Companies Act, 2013 and having its registered office at (hereinafter referred to as the "**Service Provider**" which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);

2. (name and particulars of Lenders' Representative) and having its registered office at acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the "**Lenders' Representative**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);

3. (name and particulars of the Escrow Bank) and having its registered office at ..... (hereinafter referred to as the "**Escrow Bank**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and

4 The Governor of *****, represented by [**** and having its principal offices at ******] (hereinafter referred to as the "**Authority**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns).

WHEREAS:

(A) The Authority has entered in to a Supply cum Operation and Maintenance Agreement dated ..... with the Service Provider (the "**SCOM Agreement**") for operation of Buses on build, own and operate basis ("**BOO"**), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.

(B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.

(C) The SCOM Agreement requires the Service Provider to establish an Escrow Account, *inter alia*, on the terms and conditions stated therein.

NOW THEREFORE, in consideration of the foregoing and the respective

covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1. DEFINITIONS ANDINTERPRETATION

1.1 Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

"Agreement" means this Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

"Contract" means the Supply cum Operation and Maintenance Agreement referred to in Recital (A) above and annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;

"Cure Period" means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Service Provider or the Authority, as the case may be and shall commence from the date on which a notice is delivered by the Authority or Service Provider, to the Service Provider or the Authority, as the case may be, with either the Service Provider or the Authority asking the other Party to cure the breach or default specified in such notice;

"Escrow Account" means an escrow account established in terms of and under this Agreement, and shall include the Sub-Accounts;

"Escrow Default" shall have the meaning ascribed thereto in Clause 6.1;

"Parties" means the parties to this Agreement collectively and "Party shall mean any of the Parties to this Agreement individually;

"Payment Date" means, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment; and

"Sub-Accounts" means the respective Sub-Accounts of the Escrow Account, into which the monies specified in Clause 4.1 would be credited every month and paid out if due, and if not due in a month then appropriated proportionately in such month and retained in the respective Sub Accounts and paid out there from on the Payment Date(s).

1.2 Interpretation

1.2.1 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Contract shall, unless repugnant to the context, have the meaning ascribed thereto in the Contract.

1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

1.2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Contract shall apply, ***mutatis mutandis,*** to this Agreement.

2. ESCROWACCOUNT

2.1Escrow Bank to act as trustee

2.1.1 The Authority hereby appoints the Escrow Bank to act as trustee for the Authority, Lenders' Representative and the Service Provider in connection herewith and authorises the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.

2.1.2 The Service Provider hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Authority, Lenders' Representative and the Service Provider, and applied in accordance with the terms of this Agreement. No person other than the Authority, Lenders' Representative and the Service Provider shall have any rights hereunder as the beneficiaries of, or as third party beneficiaries under this Agreement.

2.2 Acceptance of Escrow Bank

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Service Provider or the Senior Lenders' or the Authority with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Authority, Lenders' Representative and the Service Provider or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

2.3 Establishment and operation of Escrow Account

2.3.1 Within {insert number of days} days from the date of this Agreement, and in any case prior to the Appointed Date, the Service Provider shall open and

establish the Escrow Account with the… (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.

2.3.2 The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.

2.3.3 The Escrow Bank and the Service Provider shall, after consultation with the Lenders' Representative and the Authority agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4 Escrow Bank's fee

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Parties. Such fee and expenses shall be appropriated from the Escrow Account in accordance with Clause4.1.

2.5 Rights of the parties

The rights of the Authority, Lenders' Representative and the Service Provider in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Authority, Lenders' Representative and the Service Provider shall have no other rights against or to the monies in the Escrow Account.

2.6 Substitution of the Service Provider

The Parties hereto acknowledge and agree that upon substitution of the Service Provider with the Nominated Company, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Nominated Company is a Party hereto and the Nominated Company shall accordingly be deemed to have succeeded to the rights and obligations of the Service Provider under this Agreement on and with effect from the date of substitution of the Service Provider with the Nominated Company.

3. DEPOSITS INTO ESCROWACCOUNT

3.1 Deposit by the Authority

3.1.1 The Authority agrees and undertakes that it shall deposit into and/or credit the Escrow Account with;

a) Fee in accordance with Article 22 of the agreement wherein the Authority shall at all times throughout the Contract Period maintain in the Escrow Account, a balance of at least an amount equivalent to {2 (two)} months' estimated Fee;

b) Any other monies disbursed by the Authority to the Service Provider;

c) Damages payable to the Service Provider;

d) Termination Payments.

3.2 Deposits by the Service Provider

3.2.1 The Service Provider agrees and undertakes that it shall deposit into and/or credit the Escrow Account with:

a) all monies received in relation to the Project from any source, including the Senior Lenders, lenders of Subordinated Debt and the Service Provider;

b) all funds received by the Service Provider from its share-holders, in any manner or form;

c) any other revenues, rentals, deposits or capital receipts, as the case may be, from or in respect of the Project; and

d) all proceeds received pursuant to any insurance claims.

3.2.2 The Service Provider may at any time make deposits of its other funds into the Escrow Account, provided that the provisions of this Agreement shall apply to such deposits.

3.3 Deposits by Senior Lenders

The Lenders' Representative agrees, confirms and undertakes that the Senior Lenders shall deposit into and/or credit the Escrow Account with all disbursements made by them in relation to or in respect of the Project; provided that notwithstanding anything to the contrary contained in this Agreement, the Senior Lenders shall be entitled to make direct payments to the Contractors under and in accordance with the express provisions contained in this behalf in the Financing Agreements.

3.4 Interest on deposits

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; provided that the Escrow Bank shall be entitled to appropriate there from the fee and expenses due to it from the Authority in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

4. WITHDRAWALS FROM ESCROW ACCOUNT

4.1 Withdrawals during Contract Period

4.1.1 At the beginning of every month, or at such intervals as the Service Provider may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in

any month, then retain such monies in such Sub-Accounts and pay out there from on the Payment Date(s):

a) All payments towards taxes and other statutory levies, payable by the Service Provider for and in respect of the Project;

b) all payments relating to construction of the Maintenance Depot and procurement of Buses, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;

c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;

d) O&M Expenses incurred by the Authority, provided it certifies to the Escrow Bank that it had incurred such expenses in accordance with the provisions of the SCOM Agreement and that the amounts claimed are due to it from the Service Provider;

e) monthly proportionate provision of Debt Service due in an Accounting Year;

f) all payments and Damages certified by the Authority as due and payable to it by the Service Provider pursuant to the SCOM Agreement;

g) monthly proportional provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;

h) any reserve requirements set forth in the Financing Agreements; and

i) balance, if any, in accordance with the instructions of the Service Provider.

4.1.2 No later than 60 (sixty) days prior to the commencement of each Accounting Year, the Service Provider shall provide to the Escrow Bank, with prior written approval of the Lenders' Representative, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1; provided that such amounts may be subsequently modified, with prior written approval of the Lenders' Representative, if fresh information received during the course of the year makes such modification necessary.

4.2 Withdrawals upon Termination

Upon Termination of the Contract, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, shall be appropriated in the following order:

(a) all taxes due and payable by the Service Provider for and in respect of the Project;

(b) all payments and Damages certified by the Authority as due and payable to it by the Service Provider pursuant to the SCOM Agreement and any claims in connection with or arising out of Termination;

(c) retention and payments arising out of, or in relation to, liability for defects and deficiencies set forth in Article 34 of the SCOM Agreement;

(d) outstanding Debt Service including the balance of Debt Due;

(e) outstanding Subordinated Debt;

(f) incurred or accrued O&M Expenses;

(g) any other payments required to be made under the SCOM Agreement; and

(h) balance

(i) if any, in accordance with the instructions of the Service Provider:

Provided that the disbursements specified in Sub-clause (j) of this Clause 4.2 shall be undertaken only after the Vesting Certificate has been issued by the Authority.

4.3 Application of insufficient funds

Funds in the Escrow Account shall be applied in the serial order of priority set forth in Clauses 4.1. If the funds available are not sufficient to meet all the requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

4.4 Application of insurance proceeds

Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilised for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project, and the balance remaining, if any, shall remain deposited in the Escrow Account.

5. OBLIGATIONS OF THE ESCROW BANK

5.1 Segregation of funds

Monies and other property received by the Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Escrow Bank.

5.2 Notification of balances

15 business days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Authority as to the relevant Payment Dates), the Escrow Bank shall notify the Authority of the balances and any anticipated shortfall in

the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day. In the event of any such shortfall, the Authority shall meet the same by crediting adequate sums to the Escrow Account from its own financial sources.

5.3 Communications and notices

In discharge of its duties and obligations hereunder, the Escrow Bank:

(a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Authority upon a certificate signed by or on behalf of the Authority;

(b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;

(c) shall, within 7 Business Days after receipt, deliver a copy to the Authority acting through.....(name to be specified by the Authority) of any notice or document received by the Escrow Bank (in its capacity as the Escrow Bank) from the Service Provider or any other person hereunder or in connection herewith;

(d) shall, within 7 Business Days after receipt, deliver a copy to the Service Provider of any notice or document received by the Escrow Bank (in its capacity as the Escrow Bank) from the Authority or any entity in connection herewith.

5.4 No setoff

The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies and properties held by the Escrow Bank in the Escrow Account shall not be considered as part of the assets of the Escrow Bank and being trust property, shall in the case of bankruptcy or liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

5.5 Regulatory approvals

The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Account. The Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

6. ESCROW DEFAULT

6.1 Escrow Default

6.1.1 Authority Default

Following events shall constitute an event of default by the Authority (an "Authority Escrow Default") unless such event of default has occurred as a result of Force Majeure or any act or omission of the Service Provider:

a) the Authority commits breach of this Agreement by failing to deposit any monies into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 45 business days;

b) the Authority causes the Escrow Bank to transfer funds to any account of the Authority in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub-Account in which such transfer should have been made, within a Cure Period of 45 business days; or

c) the Authority commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 45 business days.

6.1.2 Service Provider Default

Following events shall constitute an event of default by the Service Provider (an "Service Provider Escrow Default") unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority:

a) the Service Provider commits breach of this Agreement by failing to deposit any monies into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 45 business days;

b) the Service Provider causes the Escrow Bank to transfer funds to any account of the Service Provider in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub-Account in which such transfer should have been made, within a Cure Period of 45 business days; or

c) the Service Provider commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 45 business days.

6.1.3 Upon occurrence of an Authority Escrow Default or Service Provider Escrow Default, as the case may be, the consequences thereof shall be dealt with under and in accordance with the provisions of the Contract.

7. TERMINATION OF ESCROW AGREEMENT

7.1 Duration of the Escrow Agreement

This Agreement shall unless terminated earlier by the mutual consent of the Parties or otherwise in accordance with the provisions of this Clause by written notice from the Authority and the Service Provider to the Escrow Bank, remain in full force and effect for the duration of the Contract.

7.2 Substitution of Escrow Bank

The Authority may after consultation with the Service Provider, by not less than 30 days prior notice to the Escrow Bank, the Authority, terminate this Agreement and appoint a new Escrow Bank, provided that arrangements are made for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank. The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

7.3 Closure of Escrow Account

The Escrow Bank shall, at the request of the Authority made on or after the payment by the Authority of all outstanding amounts under the Contract including the payments specified in Clause 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and Sub-Accounts and pay any amount standing to the credit thereof to the Authority. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

8. SUPPLEMENTARY ESCROW AGREEMENT

8.1 Supplementary escrow agreement

The Authority and the Service Provider shall be entitled to enter into a supplementary escrow agreement with the Escrow Bank providing, inter alia, for detailed procedures and documentation for withdrawals from Sub-Accounts pursuant to Clause 4.1.1 and for matters not covered under this Agreement such as the restrictions on withdrawals by the Service Provider or the Authority in the event of breach of this Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency

between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

9. INDEMNITY

9.1 General indemnity

9.1.1 The Authority will indemnify, defend and hold the Service Provider and Escrow Bank, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Authority of any of its obligations under this Agreement or on account of failure of the Authority to comply with Applicable Laws and Applicable Permits.

9.1.2 The Service Provider will indemnify, defend and hold the Authority harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Service Provider to fulfill any of its obligations under this Agreement materially and adversely affecting the performance of the Authority's obligations under the Contract.

9.1.3 The Escrow Bank will indemnify, defend and hold the Authority harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfill its obligations under this Agreement materially and adversely affecting the performance of the Authority's obligations under the Contract other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents.

9.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 9.1 or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within [●] days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

10. DISPUTE RESOLUTION

10.1 Dispute resolution

In the event a Dispute is not resolved amicably by Conciliation, as provided in Article 39.3, either Party may approach the courts for the settlement of dispute pursuant to Article 42.1.

i) The courts at Bengaluru shall have the jurisdiction over all matters/disputes between the Parties arising out of or relating to this agreement.

ii) This agreement is governed by laws of India

11. MISCELLANEOUS PROVISIONS

11.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the Courts at Karnataka. shall have jurisdiction over all matters arising out of or relating to this Agreement.

11.2 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

(a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;

(b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets;

(c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and

(d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

11.3 Priority of agreements

In the event of any conflict between the Contract and this Agreement, the provisions contained in the Contract shall prevail over this Agreement.

11.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

11.5 Waiver

11.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;

b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and

c) shall not affect the validity or enforceability of this Agreement in any manner.

11.5.2 Neither the failure by any Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by any Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

11.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

11.7 Survival

11.7.1 Termination of this Agreement:

a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and

b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

11.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of [●] years following the date of such termination or expiry of this Agreement.

11.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of Karnataka or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable

or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 10.1 of this Agreement or otherwise.

11.9 Successors and assigns

This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

11.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The addresses for service of each Party, its facsimile number or e-mail, are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

11.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

11.12 Authorised representatives

Each of the Parties shall, by notice in writing, designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

11.13 Original Document

This Agreement may be executed in four counterparts, each of which when executed and delivered shall constitute an original of this Agreement

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN

SIGNED,SEALEDAND DELIVERED

For and on behalf of ESCROWBANK by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)

SIGNED, SEALEDAND DELIVERED

For and on behalf of AUTHORITY by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of SERVICE PROVIDER in the presence of:

1.

2.

SCHEDULE-N

(See Clause 20.9)

PASSENGER CHARTER

***

At your service

Buses

Our Passenger Charter explains our commitments to you and sets out the targets that these are based upon. It is not legally binding and does not affect your legal rights, which are set under the law. Copies of the Conditions can be obtained from our Customer Service Centre. They can also be viewed online at www.*****.

Contents

(1) Introduction

(2) Our standards for bus service performance

(3) Information and planning for your journey

(4) Passengers who require assistance

(5) Buying a ticket

(6) Your journey

(7) Claims for delays and cancellations

(8) Listening to your views

1. Introduction

We want to give our passengers excellent service!

This is a bold statement but its intention is to focus the mind of every employee of the ***** Bus, on what is important - our passengers. We aim to provide you with:

(i) Safe, clean, reliable and punctual services

(ii) Clean and safe bus stops

(iii) Reliable, timely and easy to understand information

(iv) Polite, friendly and helpful staff

We will also continue to work at improving the integration of our bus services with other transport providers.

Inevitably, there will be times when problems occur and we are not able to achieve the standards we aim for. Our Charter explains what we will do for you when this happens.

2. Our standards for bus service performance

We will continue to work hard at improving our performance to provide you with a consistently reliable and punctual service.

2.1 Punctuality

Our target is that 95% of the buses will arrive at their final destination within one minute of the scheduled time.

2.2 Peak time definition

Peak buses are any buses departing between 0800 and 1000 hours inclusive, or between 1700 and 1900 inclusive, Monday to Friday only and the aforesaid time definition may be modified from time to time depending on average daily traffic volumes during these hours.

2.3 Reliability

Our target is that 99% of all scheduled services will run. This is measured from Monday to Friday (excluding public holidays).

You can view our performance results for the previous four weeks and 12 months on 'Track Record' posters displayed on the website of the **** .

The method of monitoring our performance is independently audited annually.

We do not include disruption caused by matters out of the industry's control, such as trespass, vandalism and terrorism.

3. Information and planning for your journey

We will provide you with accurate and impartial information about the bus services, fares and facilities to help you plan your journey. You can obtain this information in a number of ways.

(i) *** Bus Enquiries-telephone:. (24 hours)**

****** Bus Enquiries offers you impartial information on bus times and fares for any part of the city, on behalf of all the bus companies.

* Calls are charged at a local rate and may be monitored.

You can also obtain online information about bus times and up-to-the-minute bus- running information by visiting www.*****.

(ii) Customer Service Centre – Tel:***

In addition to the Bus Enquiries, Customer Service Centre also provides information on how our buses services are running. The Customer Service Centre is open 24 hours a day except on national holidays.

*Calls are charged at a local rate and may be monitored.

3.1 At the Maintenance Depots

We will display up-to-date timetable posters at all Maintenance Depots and our website ****. These will include the main destinations and connections.

Timetables and pocket timetables are available in advance of timetable changes.

We also provide information on posters and other signages at bus stops about the location of bus stops and other local transport to help you continue your journey.

3.2 Our website

We aim to provide as much useful and relevant information as possible on our website to help you plan your journey. This includes real-time bus-running information and pocket timetables to download.

3.3 Engineering work

3.3.1 Planned engineering work

From time to time, ***** Buses have to carry out planned engineering and improvement work to maintain the Buses. This can cause alterations to our services, especially on weekends and public holidays.

When alterations take place, we will advise you in advance where possible through our published timetables and our website ****.

For weekend and public holiday engineering work affecting our services, a poster titled ‘Changes to Bus Times’ will be displayed at each bus stop we serve.

Information will also be available from:

- Bus Enquiries
- Customer Service Centre

We will always aim to provide information at least four weeks in advance through these three channels.

3.3.2 Unplanned engineering work

Occasionally, ***** Buses have to carry out emergency engineering work at very short notice. When this happens we aim to inform you through Bus Enquiries, our Customer Service Centre, bus stop and on-bus public address announcements, bus stop posters, Teletext and local radio stations.

3.3.3 Bus replacement services

When bus services are replaced by a special bus service, for all or part of the journey, it may not be possible for you to take prams or bicycles on these buses. Please enquire on our website **** or contact our Customer Service Centre if you need further advice.

3.3.4 Help and advice during your journey

We understand that alterations to services due to engineering work can cause extra problems for customers. Our on-bus staff can help you if you need advice.

4. Passengers who require assistance

We are committed to meeting the travelling needs of our disabled passengers. We recognise that many of our passengers may have special needs which require us to adjust the way we provide our service.

4.1 Advance information and assistance for disabled passengers

We advise passengers who would like assistance to contact our Customer Service Centre in advance. Our staff will advise you of the most suitable route for you, taking into account those bus stops along our route which may not be accessible for passengers with disabilities.

- Telephone (24 hours):……

- Fax: ……
- Textphone:……
- Bus Enquiries textphone:……

4.2 Buses

All buses on our network are fully accessible to disabled passengers.

4.3 Reservations of wheelchair spaces

Reservations are available to disabled passengers on all of our services that have a designated wheelchair space and/or priority seats.

4.4 On-bus information

We are committed to providing important travel information in a variety of ways so that it can be accessed by as wide a group of passengers as possible.

All of our buses are equipped with public address systems to provide audible announcements to hearing passengers. All buses are equipped with a passenger information system that uses visual displays to enable hearing-impaired passengers to access information.

We recognise that good announcements are essential to visually impaired passengers, so our employees are trained to speak clearly.

4.5 Disability awareness training

All our frontline staff and managers receive training in disability awareness.

4.6 Further Information:

***** Bus System Disabled Persons' Protection Policy (DPPP) sets out our full arrangements for passengers with disabilities. It can be supplied in a range of formats (large print, Braille and audio), available from our Customer Service Centre.

We have also produced a leaflet containing useful information, called ‘Our Service for Passengers with Impairments’. It is available at our Maintenance Depots and from our Customer Service Centre.

5. Buying a ticket

We will sell you the most appropriate ticket for your journey.

5.1 In the bus

- You can pay by cash or pre-paid cards.

6. Your journey

6.1 Getting a seat

We operate a ‘walk-on’ service, which means you can board any bus provided you purchase a valid ticket. As a result, we cannot guarantee to provide a seat for you, especially during peak periods or during disruption.

6.2 Security

We work very closely with the local authorities to improve security on our

buses.

We aim to reduce levels of crime, trespass and vandalism and we are investing to achieve this. Initiatives include:

- Teams of Travel Safe Officers, trained and co-ordinated by the Police

- Installation of CCTV on Buses
- Lighting in buses Security guards at key locations.

More information can be found in the *Safety and security* section of our website.

6.4 Smoking

Smoking is not permitted anywhere on the Buses.

6.5 Lost Property

Our Lost Property office at …….. is open from 0730 -1900 Monday to Friday. Telephone the office on …….. All property found on our services and at our bus stops is forwarded to our Lost Property office.

To make an enquiry, complete our Lost Property online form.

6.6 Service disruption

Unfortunately, things do sometimes go wrong, causing disruption that cannot always be foreseen or avoided. In these circumstances, we may have to introduce emergency timetables. We will aim to inform you in advance before these timetables come into operation, with notices at bus stops and by other appropriate media.

Other causes of disruption include:

- Emergency engineering work
- Trespass and vandalism
- Bus breakdowns
- Accidents
- Security alerts.

Under such circumstances we may have to make changes to our services without giving prior warning to protect your safety and that of our staff. We will always try to minimise disruption, keep you informed and provide or recommend alternative means of travel.

If a problem occurs after your bus journey has started, we will work hard to get you to your destination bus stop or provide other transport arrangements. If your intended journey is no longer possible, we will do our best to get you back to an appropriate bus stop.

All our buses are fitted with public address systems and most of our staff are linked by telephone systems. We aim to let you know what is happening.

7. Listening to your views

We carry out and analyse passenger survey research to provide information about what you think of different aspects of our service.

We hold regular Meet the Manager events, which enable you to speak directly to managers to put your views to them or ask them questions. Details of Meet the Manager events will be advertised on bus stop posters, in our passenger magazine *e-motion*, through our Customer

Service Centre and also online.

We will listen to your views and communicate through correspondence and by telephone. We have a specially trained Customer Service Centre team able to respond to you and we also liaise with passenger representative bodies and user groups that exist to protect your interests.

7.1 Making a comment or complaint

We welcome your comments, suggestions, complaints and praise about any aspect of our service. We also welcome comments about our Charter.

Senior managers monitor the number and type of complaints and comments that you make. They are also responsible for delivering continuous improvement to customer service. Your feedback can therefore help us to achieve this.

If you are commenting on a journey please remember to include your rail tickets and any other details, as this will help us to provide you with a quicker response.

7.2 Further information:

We have a full Customer Comments and Complaints Handling Procedure (CCCHP). Copies of our CCCHP can be obtained from our Customer Service Centre or from our website www.*****.

7.3 Contacting our Customer Service Centre

Please visit our *Contact us* section for details.

7.4 Our promised response times

If you write to us, you should hear from us within five working days of us receiving your communication.

However, it may take longer to provide a full reply (e.g. if an investigation is required) and if this happens we will send you an acknowledgement within five working days and reply within 20 working days.

If a full reply cannot be made within 20 working days we will contact you again to update you.

7.5 If you are unhappy with our reply

We will work hard to deal with your concerns to your satisfaction but if you are unhappy with our response please let us know.

Alternatively, you can approach the consumer courts or other similar for a set up under Applicable Laws.

SCHEDULE-O

(See Clause 5.5.6)

STAFFING QUALIFICATIONS

1. Drivers:

The Service Provider to ensure that the driver complies with the following conditions:

(a) Must be a holder of a valid Driving license in accordance with Applicable Laws for at least [•] years preceding the date of employment; (the Service Provider to submit copies of the licenses of all such Drivers appointed by it to the Authority for its record);

(b) Should possess minimum eight standard qualifications and any other educational/ other requirements such as Public Service Vehicle (PSV) badge as prescribed under Applicable Law;

(c) Should possess minimum [•] years' experience of driving heavy transport vehicles in India;

(d) Should not have been blacklisted from operation of a heavy commercial vehicle and or a transport vehicle;

(e) Should not have any pending cases related to fatal accidents or traffic fines due or have his license suspended at any time during the last [•] years preceding Effective Date;

(f) Should meet all requirements specified under Applicable Laws including without limitation, the Central Motor Vehicle Rules,1989.

SCHEDULE-P

(See Clause 33.6)

VESTING CERTIFICATE

1. The (the "Authority") refers to the Contract dated*** (the "Contract") entered into between the Authority and …… (the "Service Provider")for
……(hereinafter called the 'Project').

2. The Authority hereby acknowledges compliance and fulfillment by the Service Provider of the hand back requirements set forth in Article 33 of the Contract on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the Service Provider in or about the Project shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.

3. Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Service Provider to rectify and remedy any defect or deficiency in any of the Hand back requirements and/or relieving the Service Provider in any manner of the same.

Signed this *** day of ***, 20** at……

AGREED, ACCEPTED AND SIGNED	SIGNED, SEALED AND DELIVERED
For and on behalf of SERVICE PROVIDER by:	For and on behalf of Authority by:
(Signature)	(Signature)
(Name)	(Name)
(Designation)	(Designation)
(Address)	(Address)

In the presence of:

1. 2.

SCHEDULE-Q

(See Clause 19.7)

DATA MONITORING SYSTEM

1. Data Monitoring System

In compliance with the obligations set forth in Clause 19.7 of this Agreement, the Contractor shall install the data monitoring system comprising of all equipment and services listed in Annex 1 of this Schedule– Q.

2. On Board Devices

In compliance with the obligations set forth in Clause 19.7 of this Agreement, the Contractor shall install the on-board devices on each bus in accordance with the specifications listed in Annex 2 of this Schedule–Q.

Annex – I
On Board Devices

i. The Bidder shall procure buses as defined by the Authority which shall also include various but not limited to ITS System as defined by UBS II, AIS 140 Specifications and any amendments issued thereof. Some of the equipment's and their quantities are listed below:

Sr. No	Type of Equipment	12m/ 9m/7m (Qty)	Remarks
1	Passenger Display Boards	[3/4]	
2	Speaker	2	
3	Amplifier	1	
4	Single Control Unit (SCU) / On Board Unit (OBU)	1	
5	Driver Display Unit (DDU)	1	
6	CCTV with MDVR	[3/4]	Internal and External with 7 days backup storage
7	Panic Button		As per AIS 140 Specifications
8	Camera based Automatic Passenger Counters (APC)	[1/2]	At each door

ii. The OBITS equipment installed in the buses should provide accuracy upto last 3-4 meters from the standing location and not beyond

iii. The equipment of the OBITS shall be integrated to each other and the Bus CAN for transmitting all the bus data, vehicle tracking data and the any other data as required by the Authority. The Cost of such integration should be the responsibility of the Contractor.

iv. The Authority shall provide all the route information for along with Passenger Information System to the Contractor to upload into the OBITS.

v. The camera based passenger counter shall be integrated to the OBITS at the time of prototype approval, or delivery of the bus or as a date mutually agreed with the Authority.

vi. The common minimum requirement of vehicle health monitoring and diagnostics (VHMD) parameters will be-SOC level, Motor speed in RPM, Vehicle Speed. The OEM should provide minimum 10 – 15 VHMD parameters through CAN Bus Data.

vii. Security Camera Network (CCTVs) minimum three numbers and display screen should meet the specification for IP based cameras and mNVR as per Detailed specification document for CCTV devices as per IS 16833:2018 CCTV system with integrated emergency System (with 2-megapixel camera, SSD hard disc, 4G/5G,

Wifi for data transfer). Responsibility of APIs based integration with backend System.

viii. Rear View Camera System to display the zone behind the vehicle shall be provided along with display on or near dash board. The Reverse Parking Alert System (RPAS) shall comply with provisions of AIS
145. The indirect vision system shall get activated upon engagement of reverse gear. RPAS should give audio warning on reaching the critical distance available for reverse parking.

Annex - II
Data Monitoring System

i. The bidder shall procure buses in compliance with AIS-140: Intelligent Transportation Systems (ITS)
- Requirements for Public Transport vehicle operation and set up data monitoring systems for on board ITS: Vehicle Location Tracking, Camera Surveillance System and Emergency Request Button. The bidder shall set up systems for monitoring operations and managing incidents.

ii. The bidder shall share real time data from on-board devices using standard communications protocols defined by AIS 140 with the Authority. The bidder shall give the Authority access to real time feed from buses through Advanced Programming Interface (APIs) and support the Authority in integrating feed from the buses procured under the concession to existing Intelligent Transport Management Systems (ITMS) set up by the Authority to ensure monitoring of services and KPIs set out under Article 20 of the agreement.

iii. Electric bus (eBus) performance and safety are directly linked with the battery performance. The usage of eBus battery under sub-optimal conditions can directly influence the performance as well as life of the battery. Analysis of the impact of different stress factors (Battery temperature, C-rate, DOD, and SOC) on the battery can help in getting more insights into the degradation mechanism and battery aging (i.e. Calendar and Cyclic aging). Monitoring and analysis of some of the battery parameters during eBus operation is important to ensure optimal battery life and eBus performance along with a high level of safety. As the Battery Management System (BMS) of the eBus battery monitors all the critical parameters of the battery during eBus operation, the availability of these data with the Authority will help in better planning of eBus operation and charging strategies and ensure safety of operations.

iv. The bidder shall share vehicle health monitoring and diagnostics (VHMD) parameters through the bus CAN data on a real time basis with the Authority.The following CAN parameters should to be integrated to the on board IoT device/OBITS and capable of transmitting data at a frequency of 30 sec either to a server set-up by the Authority or through APIs set up by the bidder. The list of CAN data parameters shall be shared over and above the vehicle location data through the on board telematics system.

1. Timestamp
2. Odometer reading
3. Vehicle Status
4. SoC (State of Charge)
5. SoH (State of Health)
6. Speed
7. Acceleration
8. Voltage (pack and cell level)

9. Current (pack and cell level)
10. Charger Current
11. Charger Voltage
12. Ambient temperature
13. Cell temperature
14. Motor temperature
15. BMS error

SCHEDULE-R

(See Clause 26.2)

PANEL OF CHARTERED ACCOUNTANTS

1 Panel of Chartered Accountants

Pursuant to the provisions of Clause 26.2.1 of the Agreement, the Authority and the Service Provider shall prepare a mutually agreed panel of 3 (three) reputable firms of Chartered Accountants having their registered offices in India (the "**Panel of Chartered Accountants**"). The criteria for preparing such Panel and the procedure to be adopted in this behalf shall be as set forth in this Schedule-R.

2 Invitation for empanelment

2.1 The Authority shall invite offers from all reputable firms of Chartered Accountants who fulfill the following eligibility criteria, namely:

(a) the firm should have conducted statutory audit of the annual accounts of at least one hundred companies registered under the Companies Act, 1956, or the Companies Act, 2013, of which at least ten should have been public sector undertakings;

(b) the firm should have at least 3 (three) practicing Chartered Accountants on its rolls, each with a minimum experience of ten years in the profession;

(c) the firm or any of its partners should not have been disqualified or black-listed by the Comptroller and Auditor General of India or the Authority; and

(d) the firm should have an office in the State or in an adjacent State with at least 2 (two) practicing Chartered Accountants on its rolls in such State.

2.2 Interested firms meeting the eligibility criteria shall be required to submit a statement of their capability including the bio-data of all the practicing Chartered Accountants on its rolls. In particular, each firm shall be required to furnish year-wise information relating to the names of all the companies with an annual turnover exceeding Rs. 25,00,00,000 (Rupees twenty five crore) whose annual accounts were audited by such firm in any of the preceding 5 (five) Accounting Years.

3 Evaluation and selection

3.1 The information furnished by each firm shall be scrutinised and evaluated by the Authority and 1 (one) point shall be awarded for each annual audit of the companies specified in Paragraph 2.2 above. (For the avoidance of

doubt, a firm which has conducted audit of the annual accounts of any such company for five years shall be awarded five points).

3.2 The Authority shall prepare a list of all the eligible firms along with the points scored by each such firm and 3 (three) firms scoring the highest points shall be identified and included in the draft Panel of Chartered Accountants.

4 Consultation with the Service Provider

The Authority shall convey the aforesaid panel of firms to the Authority for scrutiny and comments, if any. The Service Provider shall be entitled to scrutinise the relevant records of the Authority to ascertain whether the selection of firms has been undertaken in accordance with the prescribed procedure and it shall send its comments, if any, to the Authority within 15 (fifteen) days of receiving the aforesaid panel.

5 Mutually agreed panel

5.1 The Authority shall, after considering all relevant factors including the comments, if any, of the Service Provider, finalise and constitute a panel of 03 (three) firms which shall be deemed to be the mutually agreed Panel of Chartered Accountants.

5.2 After completion of every five years from the date of preparing the mutually agreed Panel of Chartered Accountants, or such earlier period as may be agreed between the Authority and the Service Provider, a new panel shall be prepared in accordance with the provisions of this Schedule-R.

SCHEDULE-S

(See Clause 35.3.1)

SUBSTITUTION AGREEMENT

THIS SUBSTITUTION AGREEMENT is entered into on this the ……. day of ……20….

AMONGST

1 The Governor of *****, represented by [• and having its principal offices at *****] (hereinafter referred to as the "**Authority**" which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);

2 [……. Limited], a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at ……., (hereinafter referred to as the "**Service Provider**" which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes);

3 (name and particulars of Lenders' Representative) and having its registered office at
……., acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the "**Lenders' Representative**", which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

WHEREAS:

(A) TheAuthorityhasenteredintoaSupplycumOperationandMaintenanceAgreement dated
……. with the Service Provider (the "**SCOM Agreement**") for e-Buses in the State on Gross Cost Contract basis ("**GCC**"), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.

(B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.

(C) Senior Lenders have requested the Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Contract to a Nominated Company in accordance with the provisions of this Agreement and the SCOM Agreement.

(D) In order to enable implementation of the Project including its financing, construction, operation and maintenance, the Authority has agreed and undertaken to transfer and assign the Contract to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the SCOM Agreement.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound

hereby, the Parties agree as follows:

1 DEFINITIONS ANDINTERPRETATION

1.1 Definitions

In this Substitution Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

"**Agreement**" means this Substitution Agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;

"**Financial Default**" means occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Service Provider for a minimum period of 3 (three)months;

"**Lenders' Representative**" means the person referred to as the Lenders' Representative in the foregoing Recitals;

"**Nominated Company**" means a company, incorporated under the provisions of the Companies Act, 1956, or the Companies Act, 2013, as the case may be, selected by the Lenders' Representative, on behalf of Senior Lenders, and proposed to the Authority for assignment/transfer of the Contract as provided in this Agreement;

"**Notice of Financial Default**" shall have the meaning ascribed thereto in Clause 3.2.1; and

"**Parties**" means the parties to this Agreement collectively and "**Party**" shall mean any of the Parties to this Agreement individually.

1.2 Interpretation

1.2.1 References to Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders' Representative, acting for and on behalf of Senior Lenders.

1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

1.2.3 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the SCOM Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the SCOM Agreement.

1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the SCOM Agreement shall apply, *mutatis mutandis*, to this Agreement.

2 ASSIGNMENT

2.1 Assignment of rights and title

The Service Provider hereby agrees to assign the rights, title and interest in the Contract to, and in favour of, the Lenders' Representative pursuant to and in accordance with the provisions of this Agreement and the SCOM Agreement by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

3 SUBSTITUTION OF THESERVICE PROVIDER

3.1 Rights of substitution

3.1.1 Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders' Representative shall be entitled to substitute the Service Provider by a Nominated Company under and in accordance with the provisions of this Agreement and the SCOM Agreement.

3.1.2 The Authority hereby agrees to substitute the Service Provider by endorsement on the SCOM Agreement in favour of the Nominated Company selected by the Lenders' Representative in accordancewiththisAgreement.
(Fortheavoidanceofdoubt,theSeniorLendersorthe

Lenders' Representative shall not be entitled to operate and maintain the Project as Service Provider either individually or collectively).

3.2 Substitution upon occurrence of Financial Default

3.2.1 Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Service Provider (the "Notice of Financial Default") along with particulars thereof, and send a copy to the Authority for its information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Service Provider for the purposes of this Agreement.

3.2.2 Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Service Provider by a Nominated Company in accordance with the provisions of this Agreement.

3.2.3 At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Authority to suspend all the rights of the Service Provider and undertake the operation and maintenance of the Project in accordance with the provisions of Article 16 and 17 of the SCOM Agreement, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the SCOM Agreement. The aforesaid Suspension shall be revoked upon substitution of the Service Provider by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Authority may terminate the SCOM Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the SCOM Agreement; provided that upon written request from the Lenders' Representative and the Service Provider, the Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days. For the avoidance of doubt, the Authority expressly agrees and undertakes to terminate the SCOM Agreement forthwith, upon receipt of a written request from the Lenders' Representative at any time after 240 (two hundred and forty) days from the date of Suspension hereunder.

3.3 Substitution upon occurrence of Service Provider Default

3.3.1 Upon occurrence of an Service Provider Default, the Authority shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days time to the Lenders' Representative to make a representation, stating the intention to substitute the Service Provider by a Nominated Company.

3.3.2 In the event that the Lenders' Representative makes a representation to the Authority within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it intends to substitute the Service Provider by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Service Provider by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of

such representation, and the Authority shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders' Representative and the Service Provider, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety)days.

3.4 Procedure for substitution

3.4.1 The Authority and the Service Provider hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Clause 3.3.2, as the case may be, theLenders'Representativemay,withoutprejudicetoanyoftheotherrightsorremediesof

the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Project including the Contract to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Service Provider towards the Authority under the SCOM Agreement and towards the Senior Lenders under the Financing Agreements.

3.4.2 To be eligible for substitution in place of the Service Provider, the Nominated Company shall be required to fulfill the eligibility criteria that were laid down by the Authority for short listing the bidders for award of the Contract; provided that the Lenders' Representative may represent to the Authority that all or any of such criteria may be waived in the interest of the Project, and if the Authority determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.

3.4.3 Upon selection of a Nominated Company, the Lenders' Representative shall request the Authority to:

(a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Project in accordance with the provisions of the SCOM Agreement;

(b) endorse and transfer the Contract to the Nominated Company, on the same terms and conditions, for the residual Contract Period; and

(c) enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.

3.4.4 If the Authority has any objection to the transfer of Contract in favour of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Authority, the Nominated Company shall be deemed to have been accepted. The Authority thereupon shall transfer and endorse the Contract within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Service Provider.

3.5 Selection to be binding

The decision of the Lenders' Representative and the Authority in selection of the Nominated Company shall be final and binding on the Service Provider. The Service Provider irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior Lenders or the Authority taken pursuant to this Agreement including the transfer/assignment of the Contract in favour of the Nominated Company. The Service Provider agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Service Provider's shares. It is hereby acknowledged by the Parties that

the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Authority and the Service Provider shall have no right or remedy to prevent, obstruct or restrain the Authority or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Contract as requested by the Lenders' Representative.

4 PROJECTAGREEMENTS

4.1 Substitution of Nominated Company in Project Agreements

The Service Provider shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Service Provider in the event of such Nominated Company's assumption of the liabilities and obligations of the Service Provider under the SCOM Agreement.

5 TERMINATION OF SCOMAGREEMENT

5.1 Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Authority to terminate the SCOM Agreement forthwith, and upon receipt of such notice, the Authority shall undertake Termination under and in accordance with the provisions of Article 32 of the SCOM Agreement.

5.2 Termination when no Nominated Company is selected

In the event that no Nominated Company acceptable to the Authority is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Clause 3.3.2, the Authority may terminate the SCOM Agreement forthwith in accordance with the provisions thereof.

5.3 Realisation of Debt Due

The Authority and the Service Provider hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Service Provider, without any further reference to or consent of the Service Provider, the Debt Due upon Termination of the SCOM Agreement. For realisation of the Debt Due, the Lenders' Representative shall be entitled to make its claim from the Escrow Account in accordance with the provisions of the SCOM Agreement and the Escrow Agreement.

6 DURATION OF THEAGREEMENT

6.1 Duration of the Agreement

This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

(a) Termination of the Agreement; or

(b) no sum remains to be advanced and no sum is outstanding to the Senior Lenders, under the Financing Agreements.

7 INDEMNITY

7.1 General indemnity

7.1.1 The Service Provider will indemnify, defend and hold the Authority and

the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Service Provider of any of its obligations under this Agreement or on account of failure of the Service Provider to comply with Applicable Laws and Applicable Permits.

7.1.2 The Authority will indemnify, defend and hold the Service Provider harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfill any of its obligations under this Agreement, materially and adversely affecting the performance of the Service Provider's obligations under the SCOM Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.

7.1.3 The Lenders' Representative will indemnify, defend and hold the Service Provider harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfil its obligations under this Agreement, materially and adversely affecting the performance of the Service Provider's obligations under the SCOM Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

8 DISPUTE RESOLUTION

8.1 Dispute resolution

In the event a dispute is not resolved amicably by conciliation, as provided in article 39.3 either party may approach the court for the settlement of dispute pursuant to article 42.1.

i) The courts at Bengaluru shall have the jurisdiction over all matters/disputes between the parties arising out of or relating to this agreement.
ii) This agreement is governed by laws of India.

9 MISCELLANEOUS PROVISIONS

9.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with

and governed by the laws of India, and the Courts at Karnataka*** shall have jurisdiction over all matters arising out of or relating to this Agreement.

9.2 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

(a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;

(b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets;

(c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and

(d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

9.3 Priority of agreements

In the event of any conflict between the SCOM Agreement and this Agreement, the provisions contained in the SCOM Agreement shall prevail over this Agreement.

9.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

9.5 Waiver

9.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

(a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;

(b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and

(c) shall not affect the validity or enforceability of this Agreement in any manner.

9.5.2 Neither the failure by either Party to insist on any occasion upon the

performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

9.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

9.7 Survival

9.7.1 Termination of this Agreement:

(a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and

(b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

9.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

9.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction Karnataka or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 8 of this Agreement or otherwise.

9.9 Successors and assigns

This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

9.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

9.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

9.12 Authorised representatives

Each of the Parties shall by notice in writing designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

9.13 Original Document

This Agreement may be executed in three counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

THE COMMON SEAL OF SERVICE PROVIDER has been affixed pursuant to the resolution passed by the Board of Directors of the Service Provider at its meeting held on the …… day of 20…… hereunto affixed in the presence of ……., Director, who has signed these presents in token thereof and ……., Company Secretary / Authorised Officer who has countersigned the same in token thereof [$]:

SIGNED, SEALED AND DELIVERED
For and on behalf of
AUTHORITY by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

SENIOR LENDERS by the Lenders' Representative:

(Signature)
(Name)
(Designation)
(Address)
(Fax)
(e-mail address)

In the presence of:

1. 2.

[$] To be affixed in accordance with the articles of association of the Service Provider.

SCHEDULE-T

(See Clause 22.5.2)

STATEMENT OF INPUT COST

Period	**Total Units of Electricity consumed at the Maintenance Depot**	**Electricity Units consumed at / by the Charging Infrastructure**	**Price per kWh of electricity on the Date of Submission of Statement**

Name & Designation of the Authorised Signatory:

Date of Submission: _____

Note 1: Authority may modify the statement depending on specific requirement.

Chief Mechanical Engineer,BMTC